

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1163 of 2007
with
IA No. CAN 2 of 2009 (CAN 1966 of 2009)

Sm. Anawara Beoa & Anr.
Vs.
The Chairman,
Calcutta State Transport Corporation & Anr.

Mr. Parimal Kumar Pahari
... For the respondent no.2/Insurance Co.

None appears on behalf of the appellants/
claimants.

Heard the learned advocate appearing on behalf of
the respondent no.2/National Insurance Company
Limited.

This is an appeal challenging the judgment and
order dated 15th September, 1994 passed by the learned
Judge, Motor Accident Claims Tribunal and Additional
District Judge, 6th Court, Midnapore, in MAC Case No.151
of 1991 granting award of Rs.39,600/-.

The claim petition arose out of an accident alleged
to have been taken place on 2nd March, 1991 at about 2.30
hours while the deceased Ejajul Khan @ Aju Khan was
returning from Junput by cycle through Junput – Contai
and Digha road, adjacent to Contai Park Hotel. Suddenly
CSTC Bus, bearing registration no.WBS/5604, dashed the

victim who died on the spot and the accident took place due to rash and negligent driving of the driver of the Bus. Deceased was a man of 35 years and was the only earning member of the family. He earned Rs.1,000/ per month.

The claimants filed the claim application with a prayer for compensation to the tune of Rs.1,00,000/-.

Respondent no.1/CSTC/owner of the vehicle and the respondent no.2/National Insurance Company Limited contested the claim petition under Section 166 of the Motor Vehicles Act, 1988 by filing their respective written statements, denying all material allegations in the claim petition and prayed for dismissal of the same.

In course of the trial, claimant no.1 herself examined as PW-1 and the son of the deceased was examined as PW-2. Both the witnesses corroborated the accident for which Contai Police Station Case No.59 of 1991 dated 2nd March, 1991 under Sections 279/304(A) of the Indian Penal Code was started. Relevant documents were marked as Exhibits 1 to 3.

It is not disputed that CSTC Bus was duly insured with the National Insurance Company Limited at the relevant point of time.

After considering the evidence on record, the learned Tribunal came to its findings holding, inter alia, that daily income of the deceased was not more than Rs.25/- as a labour, applying multiplier 10 in terms of life

expectancy to be of 10 to 12 years. Finally, the learned Tribunal assessed the compensation at Rs.39,600/-.

Learned advocate appearing on behalf of the respondent no.2/Insurance Company, in his usual fairness, submitted that yearly notional income should be Rs.15,000/- and multiplier should be 16.

On careful scrutiny of the evidence on record, it appears that at the time of death the deceased was a daily labour. He was the only earning member of the family consists of his wife and son. Therefore, in terms of the date of accident, I find it justified to assess the yearly notional income at Rs.15,000/-. I am also of the opinion that the deceased was aged not less than 35 years as it appears from the evidence of the claimant no.1, the wife of the deceased, was aged about 34 years at the time of the death of the deceased. In that view of the matter, multiplier 16 should be applied to assess the compensation. The appellants/claimants are also entitled to general damages of Rs.9,500/-.

Accordingly, I determine the award as follows:-

Annual Income	Rs. 15,000/-
Less: 1/3 rd Deduction	Rs. 5,000/-

	Rs. 10,000/-
Multiplier 16 (Rs.10,000/- x 16)	Rs.1,60,000/-
Add: General Damages	Rs. 9,500/-

Total	Rs.1,69,500/-
Less – Awarded by ld. Tribunal (already paid)	<u>Rs.39,600/-</u>

ENHANCEMENT

Rs.1,29,900/-

For the reasons, it is seen that the appellants/claimants are entitled to the enhanced compensation Rs.1,29,900/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the office of the learned Registrar General.

It is reported that the appellants/claimants have already received Rs.39,600/- as awarded by the learned Tribunal.

The respondent no.2/Insurance Company is directed to deposit the enhanced amount of Rs.1,29,900/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the office of the learned Registrar General of this Court within six weeks from the date of this order.

The appellants/claimants will be entitled to withdraw the enhanced amount with interest, subject to payment of additional *ad valorem* court fees on Rs.69,500/-.

The learned Registrar General will disburse the amount to the appellants/claimants on proper identification and subject to verification of the payment of *ad valorem* court fees on the enhanced amount of Rs.69,500/- by the appellants/claimants.

With the above observation, the appeal, being FMA 1163 of 2007, stands disposed of on merit.

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)