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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1078 of 2007
with
IA No. CAN 1 of 2007 (CAN 734 of 2007)

Chhaya Rani Das
Vs.
Rathi Ranjan Gupta & Ors.

Mr. Subrata Ghosh
… For the appellant/claimant

Ms. Gopa Das Mukherjee
… For the respondent no.3/New India Assurance Company Limited

Mr. Parimal Kumar Pahari
… For the respondent no.4/United India Insurance Company Limited

This appeal is directed against the judgment and order dated 9th December, 1999 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Murshidabad, in connection with MAC Case No.19 of 1997.

Learned Tribunal took both the applications under Sections 140 and 166 of the Motor Vehicles Act, 1988 together and awarded Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 and dismissed the application under Section 166 of the Motor Vehicles Act on the ground that the claimant could not prove the rash and negligent act on the part of the drivers of the vehicles involved in the accident.

The claim petition was filed on account of death of one Pradip Kumar Das, being a student of class XII, on 13th November, 1996 at about 9/9.30 a.m., while the victim was proceeding from Bharatpur towards Durgapur by a Bus, bearing registration no.WB-53/1786, on G.T. Road near Banskopa under Police Station Kanksa, the said Bus collided with another Mini Bus, bearing registration no.WGP/5405. It is alleged that the accident took place due to rash and negligent driving of the drivers of both the vehicles. The victim died on the spot. First Information Report was lodged and Kanksa Police Station Case No.87 of 1996 dated 13th November, 1996 under Sections 279/337/338/304A of the Indian Penal Code was started. Accordingly, the claim petition was filed with a prayer for compensation to the tune of Rs.2,50,000/-.

Both the Insurance Companies contested the claim petition by filing their respective written statements contending, inter alia, that the claimant is not entitled to any compensation as there was no rash or negligent act on the part of the vehicles.

In course of trial, the claimant examined as many as five witnesses, among them PW-1 is the mother of the deceased who corroborated the claim petition. PW-2 is the co-passenger of the Bus who witnessed the accident. According to his evidence, the accident took place near Banskopa at about 9/9.30 a.m. The Bus was proceeding towards Durgapur at a high speed and the Mini Bus was coming from the opposite side with high speed and thereafter accident took place due to head on collision between two buses. As a result, the victim sitting in the cabin died on the spot.

PW-3 and PW-4 claiming themselves to be the fathers of the students who were reported to have been tuitioned by the victim and both the witnesses have stated that they used to pay Rs.300/- per month each to the victim for teaching their respective sons.

PW-5 also claiming to be an eyewitness to the accident has deposed in his evidence that at the time of accident, he was present at the spot though he noticed the accident after hearing a big sound.

In course of their evidence, formal First Information Report, post-mortem report, insurance policy, Backward Class Certificate and admit cards in the name of the victim were admitted in evidence as Exhibit-1 to 8.

Learned Tribunal further considering the evidence on record held that the claimant could not prove the rash and negligent driving of the vehicles by the evidence adduced in the case.

Learned advocates appearing on behalf of the parties to this appeal have referred to the evidence on record. So far as the eye-witness is concerned, learned advocates appearing on behalf of the Insurance Companies have referred to cross-examination of PW-5 and tried to convince this Court that PW-5 was not present at the time of accident.

On careful perusal of the evidence of PW-5, I find that the said witness was also present at the moment when accident took place but he may not witness the moment when accident took place between two vehicles. But from the evidence of PW-2 – a passenger of the bus where the victim was also travelling – has stated in his evidence about rash and negligent driving of both the buses.

I am not lost sight of the fact that I am dealing with a case under a beneficial legislation where strict principle of evidence has no role to play. On careful scrutiny of evidence of PW-2, I do not find any reason to disbelieve the victim and the incident which took place due to rash and negligent driving of the two vehicles mentioned above. Moreover, the said accident was further corroborated by the First Information Report (Ext.-1) and post-mortem report (Ext.-2).

After careful perusal of the documents, I find that Kanksa Police Station Case was started, being No.87 of 1996 dated 13th November, 1996, under Sections 279/337/338/304A of the Indian Penal Code. Therefore, by no stretch of imagination I can hold that the accident took place otherwise not for the rash and negligent act of the drivers of the vehicles. From the evidence, it is seen that both the vehicles were duly insured with the respective Insurance Companies.

So far as the income of the victim is concerned, the claim petition disclosed no income but subsequently, during evidence, the claimant has tried to establish the income of her son by adducing evidence of PW-3 and PW-4 who claimed to be the fathers of the students whom the victim used to give tuition. Therefore, I am not inclined to accept the evidence adduced in support of the income of the deceased who was a student of class XII at the time of accidental death.

From the post-mortem report as well as the documents, i.e., admit cards of the victim (Exts.-6, 7 and 8), I find that he was in the age group of 21 to 25 years involving multiplier 18. From the evidence adduced on behalf of the mother as well as evidence of PW-3 and PW-4, I find that the monthly income of the victim was not more than Rs.1,000/- and it also appears from the record that the accident took place in the year 1996. Accordingly, I determine the compensation as follows:-

Monthly Income	Rs. 1,000/-
Annual Income (Rs.1,000/- x 12)	Rs. 12,000/-
Add: Future prospect (@ 40%)	Rs. 4,800/-
	Rs. 16,800/-
Less: ½ Deduction (mother is the claimant)	Rs. 8,400/-
Multiplier by 18 (Rs.8,400/- x 18)	x 18
	Rs.1,51,200/-
Add: General Damages	Rs. 30,000/-

Total	Rs.1,81,200/-
Less – Awarded by ld. Tribunal	Rs. 50,000/-
ENHANCEMENT	Rs.1,31,200/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.1,81,200/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.50,000/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.1,31,200/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

Accordingly, the respondent no.3/New India Assurance Company Limited and the respondent no.4/United India Insurance Company Limited are directed to deposit the enhanced amount of Rs.65,600/- each (Rs.1,31,200/- ÷ 2), 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 of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 1078 of 2007, is disposed of.

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

Records of the learned Tribunal along with a copy of this order 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.)