

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 873 of 2009
with
IA No. CAN 1 of 2009 (CAN 217 of 2009)
with
CAN 2 of 2011 (CAN 1585 of 2011)
with
CAN 3 of 2011 (CAN 1586 of 2011)

Calcutta State Transport Corporation (Ltd.)
Vs.
Mehful Bewa & Ors.

Mr. Sanjay Paul
... For the appellant/CSTC

Mr. Amit Ranjan Roy
... For the respondents/claimants

Affidavit of service filed in Court today is taken on
record.

In re: CAN 3 of 2011 (CAN 1586 of 2011)

This application was filed by the respondents/
claimants on 15th February, 2011 but the original
application is not in the record. Learned advocate on
behalf of the respondents/claimants has submitted a copy
which is being treated as original.

Perusing the application, it is found that there is a
prayer for recording the attainment of majority of the
respondent no.2b, namely, Mostafigur Hossain.

The prayer is allowed.

Necessary noting be made in the cause title.

Department is directed to make necessary correction in the cause title accordingly.

CAN 3 of 2011 (CAN 1586 of 2011) stands disposed of.

In re: FMA 873 of 2009

This appeal is directed against the judgment and award passed on 26th April, 2006 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Nadia, in MAC Case No.159 of 2003 whereby the learned Judge allowed compensation to the tune of Rs.8,46,159/-.

The claim petition arose out of an application under Section 166 of the Motor Vehicles Act, 1988 on account of death of one Altab Hossain, being a Constable of Police Department, in a motor accident took place by the involvement of a Calcutta State Transport Corporation (in short "CSTC") bus, bearing registration no.WB-04B/8018. While the said bus was moving with high speed endangering human life and safety, the driver lost control over the bus and dashed a stationary police jeep bearing registration no. WMQ-9448 as a result of which the victim sustained severe injury and died on the spot. On receiving First Information Report, Kaliganj Police Station Case No.154 of 2002 dated 25th October, 2002 under Sections 279/338/427/304 of the Indian Penal Code was started and charge sheet was submitted.

The claim application was filed with a prayer for compensation to the tune of Rs.6,50,000/-.

The appellant/CSTC contested the claim petition by filing written statement, denying all material allegations made in the claim petition.

In support of the claim petition, three witnesses were examined, namely, the wife of the deceased as PW-1 and she stated in her evidence that her husband was a police Constable and his salary was Rs.8,200/- per month at the time of his death. In course of her evidence, First Information Report and Post Mortem report were admitted in evidence as Exhibit-1 and Exhibit-2 respectively.

One Santosh Kumar Ganguly as PW-2 proved the gross salary of the victim and relevant document was marked as Exhibit-3.

One Sukhen Kumar Karmoker as PW-3 claimed himself as eyewitness to the accident on the relevant date i.e., 25th October, 2002 at about 3 a.m. they were returning after patrolling duty near Gobindapur, the left side wheel of the jeep was punctured and the jeep was kept on the left side of the road for changing the wheel by stepney. The driver of the jeep was trying to start the jeep after the change of wheel. Suddenly, the offending bus bearing registration no. WB-04B/8018 coming from Plassey with high speed dashed the jeep and the driver of the said jeep and Altab Hossain fell down from the jeep and both of them died on the spot. Actually nothing substantial contradiction came out of his cross-

examination excepting the reply to the suggestions put to him.

After appreciation of evidence together with the documents available on record, the learned Tribunal returned his finding in favour of the claimants allowing compensation to the tune of Rs.8,46,159/-.

From the records, it appears that the appeal was filed in the year 2006 and from then it is pending. I have gone through the entire evidence and the judgment passed by the learned Tribunal who relied on the evidence of PW-1, widow of the deceased, regarding the death of her husband on 25th October, 2002 and at the time of death, her husband was a police Constable working at Nadia. That evidence has been substantiated by the Post Mortem report (Ext.-2). The learned Tribunal further relied on the evidence of PW-2 who proved the income of the deceased supported by salary certificate (Ext.-3).

The learned Tribunal further relied on the evidence of PW-3 who was one of the members of the patrolling party and their police jeep stopped due to puncture of wheel and at that time the offending vehicle bearing registration no.WB-04B/8018 coming from Plassey with high speed dashed their jeep. As a result, the Constable and the driver of the jeep died on the spot.

Learned Judge of the Tribunal relying on the evidence of witnesses came to his finding that the

deceased used to earn Rs.8,200/- per month being a police Constable. He also opined that the accident took place due to rash and negligent act on the part of CSTC bus. Accordingly, the learned Tribunal rightly calculated the compensation in the year 2006 after applying the multiple 13 and general damages of Rs.4,500/-. The learned Tribunal finally granted compensation to the tune of Rs.8,46,159/-.

On careful scrutiny of the witnesses adduced in this case as well as the documents admitted in evidence, I do not find any reason to interfere with the judgment passed by the learned Tribunal.

Thus, the appeal fails and is hereby dismissed.

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

It is reported that the entire awarded amount was deposited before the office of the learned Registrar General without any interest which is mandatory within the meaning of Section 171 of the Motor Vehicles Act, 1988.

Accordingly, the appellant/CSTC is directed to pay interest @ 6% per annum from the date of filing of the claim petition till the deposit before the office of the learned Registrar General within six weeks from date.

The learned Registrar General will disburse the amount already deposited before him among the four

claimants in equal share on proper identification. The learned Registrar General will also disburse the amount towards interest which shall be deposited by the appellant/CSTC as well as the accrued interest on the principle amount already deposited by CSTC among the four claimants in equal share as well on proper identification.

The appellants/claimants will be entitled to withdraw the amount with interest.

Records of the learned Tribunal be transmitted back immediately.

Learned advocate on behalf of the respondents/claimants has drawn attention of this Court that the name of the respondent/claimant no.3 has been mistakenly written as Monima Begum instead of Monifa Begum according to the claim petition as well as the judgment passed by the learned Tribunal.

Therefore, the name of the respondent/claimant no.3 be corrected as Monifa Begum.

Department is directed to make necessary correction in the cause title of the Memorandum of Appeal.

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

(Bibhas Ranjan De, J.)