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

FMA 749 of 2009
with

IA No. CAN 2 of 2022

Chitra Sinha & Ors.
Vs.
The National Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy
… For the appellants/applicants/claimants

Mr. M.P. Chakraborty
… For the respondent no.1/Insurance Co.

In re: CAN 2 of 2022

This application was filed by the applicants/ appellants/claimants but the original application is not in the record. Learned advocate on behalf of the applicants/appellants/claimants has submitted a copy which is being treated as original.

Department is directed to tag the original application with the file.

Learned advocate on behalf of the applicants/ claimants has referred to this application pending for disposal. The prayers of the applicants/claimants are that the twin minors of the claimant no.1 have attained majority and the name of the claimant no.3, Nilendra Sinha, has been changed as **Ayush Sinha** according to the birth certificate as well as a copy of the affidavit filed with this application.

Heard both sides.

Both the prayers are allowed, subject to payment of court fees for one application.

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

CAN 2 of 2022 stands disposed of.

<u>In re: FMA 749 of 2009</u>

This appeal is directed against the judgment and award passed on 30th July, 2007 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Durgapur, District - Burdwan, in MAC Case No.15 of 2006/63 of 2005 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.1,79,500/-.

The claim petition arose on account of death of one Agnideep Sinha, husband of the claimant no.1 and father of the claimant nos.2 and 3 in a motor accident. On 17th March, 2005 at about 17.30 hours, the deceased was travelling in a Maruti Car bearing registration no.WB-42B/7475 towards Calcutta from Burdwan. When the car reached Nich Dankuni on Durgapur Express Way, suddenly a Truck bearing registration no.HR-55B/4594 coming from opposite direction with high speed and in negligent manner collided with the Maruti Car and as a result the victim Agnideep Sinha sustained injury and succumbed to death at the age of 34 years and he was earning Rs.6,000/- per month from salary and business.

The respondents/owners did not contest the claim case but the National Insurance Company Limited contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the driver of the offending Truck had no valid licence at the relevant point of time and the Insurance Company is not liable to pay any compensation.

In course of trial, three witnesses were examined to prove the case. The claimant no.1, wife of the victim, was examined as PW-1, who corroborated the facts stated in the claim petition and she claimed Rs.8,25,000/- as compensation.

One Sajal Das was examined as PW-2 and claimed himself to be an eye-witness of the incident. He narrated the accident which took place on 17th March, 2005 at about 17.30 hours by the involvement of a Truck bearing registration no.HR-55B/4594.

One Tapas Sarkar, the General Manager of Ruhr Ispat Pvt. Ltd., deposed in this case as PW-3 and he proved the employment of the deceased in the Company and also of his salary of Rs.5,000/- per month.

In course of evidence, First Information Report, charge sheet, insurance policy, employment certificate, salary certificates etc. were admitted in evidence as Exhibit 1 to 7.

After considering the evidence on record, the learned Tribunal assessed Rs.15,000/- per annum as income of the deceased and thereby after calculating the compensation applying multiplier 17, the entire award of compensation comes to Rs.1,79,500/-.

In assessing the income per annum, the learned Tribunal observed that the claimants could not produce any valid documents in support of the income of the deceased. But, from the record, it is found that the General Manager of Ruhr Ispat Pvt. Ltd. examined as PW-3 in this case, in course of his evidence, both salary certificate and letter of appointment were admitted in evidence as Exhibit-7. Therefore, it is not intelligible that why the learned Tribunal assessed the income at Rs.15,000/- per annum instead of Rs.60,000/- per annum as the monthly income of Rs.5,000/- has been proved by the evidence of PW-3 and documents exhibited in this case. It is true that the claimants could not produce any document or evidence in support of the business of the deceased, but that does not mean that the claimants failed to prove the income of the deceased at the time of death.

In the aforesaid view of the facts and circumstances, I assess monthly income of the deceased as Rs.5,000/- and Rs.60,000/- per annum and to assess the compensation, multiplier 16 shall be applied instead of 17.

Accordingly, I determine the amount of compensation in accordance with the principles laid down by the Hon'ble Apex Court as follows:-

Monthly Income	Rs. 5,000/-
Annual Income (Rs.5,000/- x 12)	Rs. 60,000/-
Less: 1/3rd Deduction (personal expenses) (Rs.60,000/- x 1/3rd = Rs.40,000)	Rs. 40,000/-
Add: Future prospect (@ 50%)	Rs. 20,000/-
	Rs. 60,000/-
Multiplier by 16 (Age 34 years)	X 16
	Rs. 9,60,000/-
Add: General Damages	Rs. 70,000/-
Total	Rs.10,30,000/-
Less – Awarded by ld. Tribunal	Rs. 1,79,500/-
ENHANCEMENT	Rs. 8,50,500/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation of Rs.10,30,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 4th October, 2005 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.1,79,500/- as awarded by the learned Tribunal. Therefore, the appellants/claimants are entitled to the balance amount of Rs.8,50,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 4th October, 2005 till the deposit of the amount before the office of the learned Registrar General.

Accordingly, the respondent no.1/Insurance Company is directed to deposit the enhanced amount of Rs.8,50,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 4th October, 2005 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 are entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.25,500/- (Rs.8,50,500/- – Rs.8,25,000/-) before the learned Tribunal.

The learned Registrar General will disburse the entire amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 749 of 2009, is disposed of.

All pending applications, if there be any, also 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.)