13 & 14
23.09.2022
Ct. No.237
AKG.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 786 of 2010

The New India Assurance Co. Ltd.
Vs.
Saroj Singh & Ors.

with

COT 4 of 2010

Smt. Saroj Singh & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Ms. Gopa Das Mukherjee
... For the appellant/Insurance Company in FMA 786 of 2010 & respondent no.1 in COT 4 of 2010

Mr. Krishanu Banik
... For the respondents/claimants in FMA 786 of 2010 & appellants/claimants in COT 4 of 2010

This appeal is directed against the judgment passed on 25th May, 2009 by the learned Additional District Judge, Motor Accident Claims Tribunal, 1st Court, Barasat, North 24 Parganas in M.A.C.C No. 58 of 2008 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge allowed compensation to the tune of Rs.6,12,500/-.

The claim petition was filed on account of death of one Sailesh Singh in a motor accident, which took place on 01.07.2008 at about 16.00 hours while he was driving a vehicle TATA-407 through National Highway No. 6. At that time, one lorry bearing no. WB 41b/7599 coming from opposite direction through wrong side and also with high speed dashed with Tata407 near Birshibpore, in front of Salem Motor Cycle Co. under Uluberia Police Station. After the accident, said Sailesh Singh died on spot.

Father of the deceased lodged a written complaint to the Officer-in-Charge, Uluberia Police Station, Howrah, where the case was registered as no. 241/2008 dated 01.07.2008 under Sections 279/304A/427 of the Indian Penal Code. After investigation, charge sheet was submitted against the driver of the lorry. During investigation, a good number of witnesses were examined under Section 161 of the Code of Criminal Procedure.

The claim petition was filed by the family member of the deceased with a prayer for compensation to the tune of Rs. 11,90,000/-. Appellant/insurance company contested the case by filing written statement denying all material allegations.

In course of trial on behalf of the claimants, witnesses were examined. Amongst them, witness no. 3 is the eye-witness of the incident. In his evidence, P.W.3 has stated that he witnessed the accident occurred on 01.07.2008 at about 16.00 hours. He narrated all the incidents before the Court. P.W.1, widow of the deceased deposed with regard to the age and income of the deceased in course of her evidence. Some documents were produced and admitted in evidence as Exhibit 1 to 10.

In course of argument, learned advocate appearing on behalf of the Insurance Company/appellant in respect of F.M.A. 786/2010 has contended before this Court that multiplier should be 13 instead of 17 and it is a case of contributory negligence. So, the appellant/Insurance Company is not solely liable for compensation.

On the other hand in favour of cross-objection, learned advocate appearing on behalf of the respondent in connection with F.M.A. 786/2010, has contended that evidence of widow of the deceased (P.W.1) along with Exhibit 7 clearly proved the income of the deceased was Rs. 8,000/- per month. That apart, learned advocate appearing on behalf of the respondent has further submitted that the learned Tribunal did not allow the future prospect and deducted 25% of the total compensation without any reasonable ground.

After careful perusal of the evidence particularly, the evidence of P.W.1, I find that she has stated on behalf of the income of her deceased husband as Rs. 8,000/- per month but that was not substantiated by any cogent documents.

Learned advocate appearing on behalf of the respondent has referred to Exhibit 7, which is a photocopy showing route permit in the name of the deceased.

The evidence adduced on behalf of the claimants is not at all sufficient to come to any opinion regarding income of Rs. 8,000/- in favour of the claimants.

In view of the facts and circumstances of the present case, I do not find any reason to interfere with the assessment of monthly income of Rs. 6,000/- by the learned Tribunal.

So far as the argument of the issue contributory negligence concerned, I do not find any evidence on record with regard to contributory negligence as it appears from the record that at the relevant point of time, a lorry was seen with high speed and through right flank of the road and dashed the vehicle which was driving by the deceased.

Therefore, from the evidence on record, I find that at the time of accident, the vehicle TATA 407 was moving through left flank of the road and the lorry was coming with high speed through right side of the road. If that be the position, we cannot hold that TATA 407 was also responsible for the accident.

Regarding argument on the issue of multiplier, I find that in a case of Section 166 of the Motor Vehicles Act, multiplier should be 17 for the age group from 26 years to 30 years.

In the present case, it is found from the evidence as well as the documents exhibited shows that deceased was aged about 30 years at the time of incident. So, the learned Tribunal rightly applied multiplier 17 in assessing the award.

Considering all the aforesaid facts and circumstances of the case, I find it necessary to determine the compensation as follows :-

Gross Monthly Income	Rs. 6,000/-
Annual Income	Rs. 72,000/-
40% Future prospect	Rs. 28,800/-
	Rs.1,00,800/-
Less: 1/3rd Deduction (Rs. 1,00,800 – Rs. 33,600)	Rs. 67,200/-
Use of Multiplier as per deceased-17 (Rs. 67,000 X 17)	Rs.11,42,400/
General Damages -	Rs. 70,000/-
	Rs.12,12,400/-

Accordingly, claimants no. 1 to 3 except father of the deceased are entitled to get compensation to the tune of Rs. 12,12,400/- after deducting the awarded amount by the learned Tribunal, which was deposited before the learned Registrar General by the appellant/Insurance Company, subject to payment of *ad valorem* court fees of the enhanced amount.

Claimants are also entitled to interest @ 6 % per annum from the date of filing of the claim petition i.e. on 25.09.2008 till the date of deposit of the enhanced amount by the appellant/Insurance Company before the learned Registrar General.

The appellant/Insurance Company is directed to deposit the enhanced amount along with interest from the date of filing of the claim petition till the deposit of the amount before the learned Registrar General, within six weeks from date.

The learned Registrar General will disburse the amount amongst the claimants accept father of the deceased, in equal share, on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the appeal, being FMA 786 of 2010 with COT 4/2010 stand disposed of.

All pending applications, if any, also stand disposed of accordingly.

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.)