Ct. No. 14

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F.M.A. 665 of 2009
IA No. CAN 1 of 2013 (Old No. CAN 6587 of 2013)

Smt. Rina Chatterjee & Anr.
-Versus-
Oriental Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
Ms. Sanchita Ghosh **...For the Appellants**

Mr. Rajesh Singh **...For the Respondent NO. 1 Insurance Co.**

Being aggrieved by the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Burdwan in MACC No. 220 of 2007 arising out of MACC 10 of 2007 the appellants have preferred the instant appeal. By the impugned award the learned Tribunal directed the respondent No. 1, Oriental Insurance Company Ltd. to pay a sum of Rs. 2,59,100/- as compensation to the claimants.

The facts as stated in the claim application under Section 163A of the Motor Vehicles Act may be summarized as under :-

On April 24, 2007 at about 1.00 p.m. Joydev Chatterjee of Village & Post Office – Kuchiyakil, Police Station – Joypur, District – Bankura, was returning home. While he reached near Benachapra, then one tractor bearing No. W.B.- 41B/5717 came with very high speed and dashed him. As a result of which he sustained severe injuries on his person. He was admitted to Bishnupur Hospital but ultimately he succumbed to the injuries. It is alleged by the claimants that due to rash and negligent driving on the part of the driver of the offending vehicle (tractor) the accident took place.

The deceased was a fruit and vegetable seller and he used to earn Rs. 3,300/- per month. The claimants are the wife (widow) and son of the deceased. At the time of his death, the deceased was aged about 47 years.

On the allegation of rash and negligent driving of the offending vehicle an FIR was lodged at Joypur Police Station and the FIR was registered as Joypur Police Station Case No. 15 of 2007 under Sections 279/304A of the Indian Penal Code. At the time of the accident the vehicle (tractor) was insured with the respondent No. 1, Oriental Insurance Co. Ltd. Under the facts as above the claimants sought for compensation of Rs. 3,50,000/-.

The respondent No. 1, Oriental Insurance Company contested the case by filing written statement wherein it denied the averments/allegations as made in the claim application.

Upon hearing the learned advocates appearing for the parties and on consideration of oral and documentary evidence, the learned Tribunal passed the award as above.

Learned Counsel appearing for the appellants submits that the claimants in the claim application asserted that the deceased used to earn Rs. 3,300/- per month. But the learned Tribunal has held that income of the deceased was Rs. 2,400/- per month.

It appears from the evidence on record that the deceased was a fruit and vegetable seller.

Be that as it may, it is not in dispute that in a series of decisions this Hon'ble High Court has held that the income of a workman or a labourer shall be treated to be Rs. 3,000/- per month upto the year 2010 where no documents are provided in support of income. The learned Tribunal proceeded to compute the compensation based on the monthly income of Rs. 2,400/- per month. In view of the mandate in a catena of decisions of this Court I may safely hold that in absence of any documents in support of the income the monthly income of the deceased was Rs. 3,000/- per month before he met with the accident.

That being so, the entire computation needs to be modified. The computation of the compensation would be in the following manner :-

1. Monthly income of the victim to be assessed at Rs. 3,000/- per month;

2. The annual income to be assessed at (Rs. 3,000/- X 12) = Rs. 36,000/-. As per Schedule under Section 163A of the Motor Vehicles Act there will be deduction to the extent of 1/3rd and after the deduction the figure will be (Rs.36,000/- less Rs. 12,000/-) = Rs. 24,000/-;

3. Considering the age of the deceased at the time of his death the multiplier 13 will be adopted and by multiplying the aforesaid amount by multiplier 13 the figure comes to Rs. 3,12,000/- (Rs. 24,000/- X 13);

4. Adding general damages of Rs. 9,500/-, the figure of compensation comes to Rs. 3,21,500/-.

Learned Lawyer appearing for the appellants submits that the Insurance Company has already paid Rs. 2,59,100/- as awarded by the learned Tribunal.

If the amount of Rs. 2,59,100/- is deducted from the aforesaid amount of Rs. 3,21,500/-, the figure comes to Rs. 62,400/-.

It is not disputed by any of the learned Counsels appearing for the parties that the claimants are entitled to interest at the rate of 6% per annum.

In view of the above, the award passed by the learned Tribunal needs modification.

In view of the above, the appeal is allowed.

The award passed by the learned Tribunal is modified to the following extent.

The respondent No. 1, Oriental Insurance Company Ltd. is directed to pay Rs. 62,400/- as compensation in addition to the compensation of Rs.2,59,100/- as paid by it earlier. The respondent No. 1 is directed to pay interest at the rate of 6% per annum on Rs.62,400/- from the date of filing of the claim petition on June 06, 2007.

The respondent No. 1 is directed to deposit the aforesaid awarded amount of money with interest thereon at the rate of 6% per annum by cheque issued in favour of learned Registrar General, High Court, Calcutta within six weeks from date. If the deposit is made, the learned Registrar General shall release the aforesaid amount of money to the claimants in equal share as expeditiously as possible.

In view of the above the appeal and connected application, if any, stand disposed of.

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

(Rabindranath Samanta, J.)