

FMA 281 of 2007

United India Insurance Company Limited
Vs.
Kalpana Mondal

Mr. Rajesh Singh
.....for the appellant

Mr. Krishanu Banik
.....for the respondent/claimant

This appeal is directed against the judgment passed in Motor Accident Claim Case No. 52 of 2002 under Section 163(A) of the Motor Vehicles Act passed by learned Tribunal, Additional Sessions Judge, 5th Fast Track Court, Malda awarding Rs. 1,79,500/-.

Claim petition filed on account of an accident suffered by the husband of the claimant no. 1 on 05.01.2002 at about 7 a.m. while deceased Probhas Mondal was going to work with a vehicle, tractor being No. WB 65/5186, deceased fell-down from the tractor and sustained fatal injury and ultimately died. The said tractor was ensured with the United India Insurance Company Limited.

Accordingly, claimant made this application with a prayer for compensation to the tune of Rs.1,00,000/-.

In course of trial, claimant no. 1 examined herself as PW1 and some documents in support of accident were filed and admitted in evidence as exhibits.

Learned Tribunal took Rs. 15,000/- per month as notional income of the deceased and calculated the compensation after applying multiplier 17 it comes to Rs. 1,70,000/- and included other expenses and finally learned Tribunal awarded Rs. 1,79,500/-.

In course of arguments, learned advocate on behalf of the Insurance Company submitted that deceased was gratuitous passenger so Insurance Company is entitled to recovery from the owner of the tractor, i.e. the vehicle involved in the accident.

Learned advocate appearing on behalf of the claimant did not dispute the statements advanced on behalf of the Insurance Company.

In the aforesaid view of the matter, I find no reason to interfere with the award passed by the learned Tribunal in favour of the claimant.

It is reported that Insurance Company only deposited Rs. 75,000/- out of total compensation of Rs. 1,79,500/- and claimant received Rs. Only 50,000/-.

Therefore, the appellant/Insurance Company is directed to deposit Rs. 1,04,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the same.

Appellant/Insurance Company is directed to deposit the amount mentioned above before the learned

Registrar General Office within six weeks from the date of this order.

Learned Registrar General is requested to disburse the amount deposited by the appellant/Insurance Company and also disburse Rs. 25,000/- already deposited by the Insurance Company along with the interest.

The appellant/Insurance Company is at liberty to realize the entire compensation amount along with the interest from the owner of the tractor being No WB 65/5186 directly through the execution proceedings in view of the decision of the Hon'ble Apex Court in Oriental Insurance Company Limited Vs. Nanjappan and others (2004) 13 SCC 224.

Accordingly, the appeal being FMA 281 of 2007 stands disposed of.

Any interim applications, if pending, stands disposed of as well.

Record of the Tribunal be transmitted back to the Tribunal at once.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)