

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 148 of 2012
with
IA No. CAN 2 of 2022

Kalpana Bera & Anr.
Vs.
Cholamandalam MS General Insurance
Company Limited & Anr.

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

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

Being aggrieved by and dissatisfied with the judgment and award passed on 3rd May, 2011 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 3rd Court, Paschim Medinipur, in MAC Case No.150 of 2010 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.2,93,000/-, this appeal has been preferred for enhancement of the awarded amount.

The claim petition arose out of an accident which took place on 20th February, 2010 at about 9/9.30 a.m. while the victim Purna Chandra Bera was proceeding towards Monoharpore Hut from his house. All on a sudden, one Lorry, bearing registration no.WB-51/8847, coming with high speed from the opposite direction in rash

and negligent manner, dashed the deceased and as a result, he sustained severe injury and died on the spot. Following the accident, Dantan Police Station Case No.29 of 2010 dated 21st February, 2010 under Sections 279/304A of the Indian Penal Code was started against the driver of the Lorry. The claim petition has been filed with a prayer for compensation to the tune of Rs.6,00,000/-.

Cholamdalam MS General Insurance Company Limited contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the claimants are not entitled to any compensation as prayed for. The owner of the vehicle did not contest the case by filing any written statement.

To prove the case, the claimants examined as many as two witnesses, namely, Dipak Das as PW-1 and Sankar Bera, father of the deceased, was examined as PW-2. In course of their evidence, a good number of documents, including charge sheet, post-mortem report and insurance policy were admitted in evidence as Exhibits 1 to 4.

Learned Tribunal considering the entire evidence on record, assessed notional income of the deceased is Rs.3,000/- per month and after applying multiplier 16, assessed total compensation to the tune of Rs.2,93,000/- including general damages of Rs.5,000/-.

So far as the accident is concerned, the appellants/claimants have succeeded to prove the rash and negligent driving of the offending Lorry by adducing evidence of PW-2 (father of the deceased) who stated before this Court that he witnessed the accident which took place due to rash and negligent driving of the Lorry and his evidence was further substantiated by the First Information Report and the charge sheet. Therefore, I do not find any reason to interfere with the observation of the learned Tribunal in this regard.

So far as the income of the deceased is concerned, admittedly, no evidence was adduced in this case and, therefore, the learned Tribunal rightly assessed Rs.3,000/- per month as notional income. But the learned Tribunal did not consider any compensation towards future prospect or general damages in view of the facts of the case.

Now, after applying the multiplier 18, I assess the compensation in the following manner as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 50% Deduction personal expenses	Rs. 18,000/-
Add: Future prospect (@ 40%)	Rs. 7,200/-

	Rs. 25,200/-
Multiplier by 18 (Rs.25,200/- x 18)	x18 Rs.4,53,600/-

Add: General Damages	<u>Rs. 30,000/-</u>
Total	Rs.4,83,600/-
Less – Awarded by ld. Tribunal	<u>Rs.2,93,000/-</u>
ENHANCEMENT	Rs.1,90,600/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.4,83,600/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 16th April, 2010, 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.2,93,000/- along with interest as awarded by the learned Tribunal. Therefore, the appellants/claimants are entitled to the balance amount of Rs.1,90,600/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 16th April, 2010, till the deposit of the amount before the office of the learned Registrar General.

Accordingly, the respondent/Insurance Company is directed to deposit the enhanced amount of Rs.1,90,600/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 16th April, 2010, 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 enhanced amount with interest.

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

With the above observation, the appeal, being FMA 148 of 2012, stands 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.)