

21-09-2022
Sl. 237
pk

F. M. A. 6 of 2010

Smt. Sova Rani Manna and another
Vs.
The New India Assurance Co. Ltd and another

Mr. Jayanta Banerjee,
Ms. Ruxmini Basu Roy
... for the appellants/claimants.

Mr. Kartick Kumar Bhattacharyya,
Ms. Soumashree Dutta
...for the respondent no. 1/Insurance Company

This appeal is directed against the judgement dated 14.02.2007 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in connection with M. A. C. Case No. 322 of 2004/ 114 of 2005.

The claim petition was filed on account of death of one Khokan Manna on 19.03.1999 at 7.00 a.m. when he was travelling by a truck bearing No. WMK 8046 which met an accident while proceeding with high speed and reckless manner on national highway near Sima-bandh under P. S.-Sutahata. At the time of overtaking the other vehicle the said truck turned upside down and the said Khokan Manna sustained injury and succumbed ultimately. At the time of death, the deceased, aged about 25 years, had a vegetable business and used to earn Rs.3,000/- per month.

The claim petition is filed seeking compensation to the tune of Rs.2,50,000/-. In course of proceeding two witnesses were examined on behalf of the claimants. In course of their evidence, a good number of documents were admitted in evidence as exhibit 1 to 9.

Respondent/Insurance Company contested the appeal by filing a written statement.

The learned Tribunal after appreciating the evidence on record and perusing the documents available on record finds that the claimants could not prove the monthly income of the deceased at the relevant point of time and accordingly, the learned Tribunal took income as Rs.15,000/- per annum and calculated the award to the tune of Rs.1,92,000/-.

The learned advocates appearing on behalf of the parties to this appeal did not raise any issue regarding happening of the accident or death of the deceased in motor accident for which Sutahata P. S. Case No. 24 of 1999 dated 19.03.1999 under Sections 279/338/304(A) of the I. P. C. was started against the driver of the truck and charge sheet was submitted against the driver of the said truck.

Therefore, there is hardly any scope to disbelieve factum of the accident alleged in this case. It is admitted fact of this case that the

deceased was traveling by a truck and the learned advocate appearing on behalf of the Insurance Company submits that the deceased was gratuitous passenger in violation of the condition of policy and therefore Insurance Company is not liable to pay any compensation.

It is true that the deceased was travelling by a truck and he was a gratuitous passenger but it is settled law that the Insurance Company will pay the compensation and is entitled to recover the amount from the owner of the vehicle involved in the accident, in case of violation of any condition of the policy.

The learned Tribunal took income as Rs.15,000/- per annum. Now it is settled law that income should be calculated in terms of minimum wages. From the evidence it appears that he used to deal in vegetable but no specific evidence was adduced in this regard.

In this circumstances, keeping an eye to the minimum wages, I find it justified to take income of the deceased as Rs.3,000/- per month and accordingly I would like to determine the compensation as follows:

Income (per month) =	Rs. 3,000 /-
(+) Future Prospect (40%)	<u>Rs. 1,200/-</u>
	Rs. 4,200/-

(-) deduction on personal expenses(50%)	<u>Rs. 2,100/-</u>
Annual Income	<u>Rs. 2,100/-</u> <u>x 12</u>
Multiplier(Age 25 years)	<u>Rs. 25,200</u> <u>x 18</u>
	<u>Rs. 4,53,600/-</u>
(+) General damages Feuneral – Rs.15,000/- Loss of Estate-Rs.15,000/- =	<u>Rs. 30,000/-</u>
Total Compensation	Rs. 4,83,600/-

The New India Assurance Company/respondent no. 1 is directed to pay Rs.4,83,000/- along with interest @ 6 per cent per annum from the date of filing of the claim petition till the deposit thereof after deducting Rs.40,000/- which was admittedly received by the claimants.

It is pertinent to mention that the Insurance Company is at liberty to recover the entire compensation amount from the owner of the truck bearing No. WMK 8046 through execution proceeding instead of filing any separate suit.

The Insurance Company is directed to deposit the said amount before the Registrar General within six weeks from date. The claimants are entitled to the compensation amount on payment of ad valorem deficit Court fees.

The learned Registrar General will disburse the amount to the claimants on proper identification

and after verification of payment of ad valorem Court fees on the enhanced amount.

In view of the aforesaid observations, this appeal stands disposed of. Any pending applications, if there be any, also stand disposed of.

No order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Bibhas Ranjan De, J.)