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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 225 of 2007
with
IA No. CAN 1 of 2008 (CAN 5213 of 2008)
(Application not in the file)

Smt. Dhano Murmu
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
… For the appellant/claimant

Mr. Sanjoy Paul
… For the respondent no.1/Insurance Co.

Being aggrieved by and dissatisfied with the judgment and award passed on 29th July, 2005 by the learned Judge, Motor Accident Claims Tribunal, 2nd Fast Track Court, Uttar Dinajpur at Raiganj in MAC Case No.72 of 2004 under Section 163A read with Section 167 of the Motor Vehicles Act, 1988, the appellant/claimant preferred this appeal with a prayer for enhancement of compensation on the ground that the learned Tribunal failed to determine the monthly income in view of the evidence on record and wrongly deducted 50% of the total compensation award due to non-implication of Insurance Company of the Truck.

According to the claim petition, on 22nd January, 2004 at about 5 a.m. while the deceased Amin Tudu was driving the Truck bearing registration no.WB-73-A/1706 from Kolkata towards Malda through NH-34, the offending Milk Tanker, bearing registration no. U.P.-15H/9081, coming from the opposite direction collided with the said Truck and as a result Amin Tudu died on the sport. It is also averred in the claim petition that at the relevant point of time, the deceased was 32 years of age and used to earn Rs.3,000/- per month as driver of the Truck. Accordingly, the mother of the deceased/claimant prayed for compensation to the tune of Rs.3,60,000/- along with interest thereon.

The respondent no.1/Oriental Insurance Company Limited contested the claim application by filing written statement denying all materials allegations in the claim petition and alleging, inter alia, that the offending Truck bearing no. WB-73-A/1706 was not involved in the accident.

The respondent no.2/owner also filed written statement denying all material allegations regarding accident and prayed for exemption from paying the compensation.

Learned Judge of the Tribunal framed issues on the pleadings and considering the evidence on record came to his opinion that the claimant was entitled to compensation and accordingly returned his finding by granting award of Rs.1,65,450/-.

In course of argument, learned advocate appearing on behalf of the appellant/claimant submits that the learned Tribunal wrongly determined the monthly income of the deceased at Rs.2,400/- instead of Rs.3,000/- per month. He has further submitted that deduction of 50% was not in compliance with the settled principles of law. He submitted that the claimant is at liberty to claim compensation to any of the Insurance Companies in case of accident involving two vehicles.

Learned advocate appearing on behalf of the respondent no.1/Insurance Company submits that this is a case arose out of an accident which took place in the year 2004 and the monthly income of a driver as Rs.2,400/- was sufficient to calculate the compensation. So far as the deduction of 50% is concerned, the learned advocate appearing on behalf of the respondent no.1/Insurance Company, in his usual fairness, submits that deduction of 50% is not permissible under the settled principles of law.

On careful perusal of the evidence as well as the judgment passed by the learned Tribunal, I find that the reason assigned in the judgment regarding determination of monthly income cannot be interfered with as oral evidence regarding income has not been substantiated by any other document, at least by the oral evidence of the owner of the Truck.

In the circumstances, I am unable to interfere with the determination of monthly income by the learned Tribunal.

From the impugned judgment, I find that the learned Tribunal rightly applied multiplier 17 in terms of the age of the deceased at the time of accident and calculate the entire compensation as Rs.3,30,900/- but again deducted 50% from that awarded amount as the Insurance Company of the Truck was not made a party and no compensation was sought for from the Insurance Company of the Truck.

It is trite law that here in this case the appellant/ claimant is at liberty to claim compensation from any one of the Insurance Companies. However, deduction of 50% by the learned Tribunal was not proper.

In the aforesaid view of the matter, the appellant/ claimant is entitled to compensation of Rs.3,30,900/- along with interest @ 6% per annum from the date of filing of the claim petition till the realisation of the same.

It is reported that the appellant/claimant has already received Rs.1,65,450/- as awarded by the learned Tribunal but without any interest.

In these circumstances, the respondent no.1/Insurance Company is directed to deposit Rs.1,64,450/- along with interest @ 6% per annum from the date of filing of the claim petition 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 respondent no.1/Insurance Company is also directed to deposit interest @ 6% per annum on the principal compensation amount of Rs.1,65,450/- before the office of the learned Registrar General of this Court from the date of filing of the claim petition till the date of deposit of the principle compensation amount of Rs.1,65,450/- before the learned Tribunal.

The appellant/claimant is entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the entire amount along with interest to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 225 of 2007, stands disposed of.

All pending applications, if there be any, also stand disposed of.

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.)