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

FMA 17 of 2008
with
IA No. CAN 1 of 2008 (CAN 856 of 2008)

Smt. Monimala Ghosh
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

Mr. Krishanu Banik, learned advocate on behalf of the appellant/claimant appears. The appeal is otherwise ready. It is submitted on behalf of the appellant/claimant that notice has already been served upon the Oriental Insurance Company Limited but none appears on their behalf.

Mr. Parimal Kumar Pahari who usually appears on behalf of the Oriental Insurance Company Limited is present in Court.

In that view of the matter, Mr. Parimal Kumar Pahari is requested to appear in this matter on behalf of the Oriental Insurance Company Limited.

Mr. Pahari's engagement may be regularised by the authorities of the Oriental Insurance Company Limited in due course.

Department is directed to communicate a copy of this order to the office of the Regional Manager of the Oriental Insurance Company Limited, 4, Lyons Range, Kolkata – 700001 immediately.

On prayer of Mr. Parimal Kumar Pahari, learned advocate on behalf of the respondent no.1/Insurance Company, a copy of the informal paper book is handed over to him from the records of the Court.

This appeal is directed against the judgment and award dated 28th February, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Alipore, South 24-Parganas, in connection with MAC Case No.262 of 2006 whereby the learned Judge awarded compensation to the tune of Rs.54,500/-.

The claim petition under Section 163A of the Motor vehicles Act, 1988 arose on account of death of Shyamal Ghosh, the son of the claimant, aged about 47 years on 18th March, 2006 at about 13.30 hours by the involvement of one Motor Cycle bearing registration no. WB-01/U-8511 which was proceeding with high speed and in rash and negligent manner without blowing any horn. As a result, the deceased Shyamal Ghosh who was walking on the roadside was dashed from behind by that Motor Cycle and he died in SSKM Hospital on 22nd March, 2006.

The respondent no.1/Oriental Insurance Company Limited contested the claim petition by filing written statement denying all materials averments made in the claim petition contending, inter alia, that the claimant is not entitled to any compensation from the Insurance Company.

In course of trial, only the claimant, i.e., the mother of the deceased was examined in this case as PW-1. In course of her evidence, she testified that her son died in an accident by the involvement of one Motor Cycle, bearing registration no. WB-01/U-8511, on 4th Chaitra. After the accident, he was admitted in SSKM Hospital where he succumbed to his injuries after four days. Her son was about 47 years having monthly income of Rs.3,000/- at the time of accidental death. She claimed Rs.2,00,000/- as compensation for her son's death in motor accident.

In cross-examination, PW-1 could not say the actual age of her son. She filed documents including First Information Report, charge sheet, insurance policy, post-mortem report and certificate of registration were admitted in evidence as Exhibit 1 to 5.

In course of argument, Mr. Krishanu Banik, learned advocate appearing on behalf of the appellant/ claimant has submitted that the learned Tribunal used multiplier in terms of the age of the mother instead of the deceased. In support of his contention, he relied on the principle enunciated in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6**

SCC 121 wherein the Hon'ble Apex Court observed that in a case of accidental death of a bachelor, multiplier should be considered in terms of the age of the deceased.

Mr. Banik has further submitted that the learned Tribunal took notional income of Rs.15,000/- per annum as per the Second Schedule of the Motor Vehicles Act, 1988 as the accident took place in the year 2006 instead of Rs.36,000/- per annum.

Mr. Parimal Kumar Pahari, learned advocate, on behalf of the respondent no.1/Insurance Company has supported the judgment passed by the learned Tribunal.

This is a case under Section 163A of the Motor Vehicles Act, 1988. To eschew prolixity, I refrain myself from going into elaborate discussion on the issue of accident. From FIR, charge sheet and post-mortem report, it appears that Shyamal Ghosh died out of a motor accident and this case being under Section 163A of the Motor Vehicles Act, the question of negligence does not arise.

So, in this appeal, two issues are involved. One is use of multiplier in terms of the age and the other is the amount of notional income.

In view of the principles laid down in **Sarala Verma** (supra), I find no need to discuss anything but to hold that multiplier should be used in terms of age of the deceased instead of claimant and notional income should be Rs.3,000/- per month, i.e., Rs.36,000/- per annum.

In the aforesaid view of the matter, I modify the award as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3rd Deduction (Rs.36,000/- – Rs.12,000/-)	Rs. 24,000/-
Multiplier by 13 (as per age of the deceased)	x 13
	Rs.3,12,000/-
Add: General Damages	Rs. 4,500/-
Total	Rs.3,16,500/-
Less – Awarded by ld. Tribunal	Rs. 54,500/-
ENHANCEMENT	Rs.2,62,000/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.3,16,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 17th July, 2006 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.54,500/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.2,62,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 17th July, 2006 till the deposit of the amount.

Accordingly, the respondent no.1/Insurance Company is directed to deposit the enhanced amount of Rs.2,62,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 17th July, 2006 till the 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 appellant/claimant is entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.1,16,500/- (Rs.3,16,500/- – Rs.2,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 17 of 2008, is disposed of.

All pending applications, if there be any, 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.)