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16.09.2022
Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 438 of 2009
with
IA No. CAN 1 of 2012 (CAN 9398 of 2012)
(Application not in the file)
with
CAN 2 of 2022
with
CAN 3 of 2022

Smt. Asima Sabar @ Asim & Anr.
Vs.
The National Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy
… For the appellants/claimants

Mr. Afroze Alam
… For the respondent no.1/Insurance Co.

In re: CAN 2 of 2022

The application, being CAN 2 of 2022, is taken up for hearing.

Heard both sides.

It is reported that the appellant/claimant no.1, namely, Smt. Asima Sabar @ Asim, expired on 29th August, 2015 and the instant application has been filed to expunge the name of the appellant/claimant no.1.

Accordingly, the name of the appellant/claimant no.1, Smt. Asima Sabar @ Asim, stands expunged.

Department is directed to effect the necessary correction by expunging the name of the appellant/ claimant no.1, Smt. Asima Sabar @ Asim.

CAN 2 of 2022 stands disposed of.

In re: CAN 3 of 2022

Leave is granted to the learned advocate for the appellant/claimant to correct the cause title of the Memorandum of Appeal.

This application, being CAN 3 of 2022, is taken up for hearing.

Heard both sides.

It is reported that the appellant/claimant no.2, Pratima Shabar, has already attained majority.

In the facts and circumstances, the prayer is allowed.

Necessary noting be made in the cause title.

Department is directed to make necessary correction in the cause title accordingly.

CAN 3 of 2022 stands disposed of.

In re: FMA 438 of 2009
Pratima Shabar
Vs.
The National Insurance Company Limited & Ors.

This appeal is directed against the judgment passed on 30th August, 2008 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Paschim Midnapore, in MAC Case No.504 of 2006 under Section 166 of the

Motor Vehicles Act, 1988 whereby the learned Judge allowed compensation to the tune of Rs.2,81,500/-.

The Motor Accident Claim Case arose out of an accident happened on 10th June, 2006 at about 10 a.m. while the victim Kanta Sabar was travelling a Tracker bearing registration no.WB-33/6564 which was running with very high speed and suddenly the victim fell down from the said Tracker due to rash diving and as a result of which the victim sustained injury on his head. He was taken to National Medical College & Hospital where he was admitted for treatment, but on 21st June, 2006, he died leaving his wife and minor daughter.

In support of case, the claimants examined two witnesses, namely, Smt. Asima Sabar @ Asim (widow of the deceased) as PW-1 and one eye-witness Dhirendra Nath Bakli as PW-2.

In course of hearing, all police papers, copy of the post-mortem report and copy of the insurance policy were admitted in evidence as Exhibits 1 to 5. The learned Judge of the Tribunal after appreciation of evidence and available documents, returned his finding, observing, inter alia, that the claimants could not prove the business of the victim at the time of his death while adducing any evidence and accordingly the learned Judge relied on monthly income of Rs.2,000/- and calculated the compensation to the tune of Rs.2,81,500/-.

In course of argument, none of the learned advocates appearing on behalf of the parties raised any other issue save and except monthly income of the deceased. It is submitted on behalf of the appellant/ claimant that though no document was produced in support of the said street food business but the deceased used to run his family and surely he would earn a sum of Rs.4,500/- at least for livelihood.

On the contrary, learned advocate appearing on behalf of the respondent/Insurance Company has contended that the appellant/claimant could have adduced evidence by producing any customer of the business before the Court to corroborate the factum of business claimed in the petition.

In support of the contention, learned advocate appearing on behalf of the appellant/claimant relied on the following precedents of the Hon'ble Apex Court:-

1. Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors., 2018 (4) TAC 345 (SC), and
2. Alan D. @ Lal & Anr. v. The Oriental Insurance Company Ltd., 2020 SAR (Civ) 1147.

From the evidence of this case and also exhibited documents, it appears that on the alleged date of incident, i.e., on 10th June, 2006, the victim met with an accident by the involvement of one Tracker duly insured with the National Insurance Company Limited and the victim was aged about 20 years at the relevant point of time.

So far as the monthly income of the deceased is concerned, it appears from the evidence of PW-1 (widow of the deceased) that the deceased used to earn Rs.4,500/- per month by selling street foods. She could not produce any documents in support of the business of her deceased husband and in cross-examination, she denied the suggestion put on her from the side of the Insurance Company, regarding the income of her husband.

Both in Nanu Ram alias Chuhru Ram (supra) as well as Alan D. @ Lal (supra), the Hon'ble Apex Court did not interfere with the monthly income assessed by the High Court as Rs.6,000/- and Rs.3,500/-, respectively.

From the evidence on record as well as the ratio of the aforesaid two decisions, I am of the opinion that earning of Rs.4,500/- per month for family consists of three members in the present inflated market price cannot be said to be unjustified.

In the aforesaid facts and circumstances, I find that the award should be determined in the following manner keeping an eye to the parameters settled by the Hon'ble Apex Court:-

Gross Monthly Income	Rs.	4,500/-
Annual Income (Rs.4,500/- x 12)	Rs.	54,000/-
Less: 1/3rd Deduction	Rs.	36,000/-
Add: Future prospect (@ 40%)	Rs.	14,400/-
	Rs.	50,400/-

Multiplier 17 (Age 20 yrs.) (Rs.50,400/- x 17) Loss of dependency	Rs.8,56,800/-
Add: General Damages	Rs. 70,000/-
Total	Rs.9,26,800/-
Less – Awarded by ld. Tribunal	Rs.2,81,500/-
ENHANCEMENT	Rs.6,45,300/-

In the aforesaid view of the matter, it is seen that the appellant/claimant is entitled to further enhanced amount of Rs.6,45,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual payment.

The respondent/Insurance Company is directed to deposit the enhanced amount of Rs.6,45,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the learned Registrar General of this Court within six weeks from the date of this order.

The appellant/claimant will be entitled to withdraw the enhanced amount with interest subject to payment of *ad valorem* court fees on the enhanced amount.

The learned Registrar General will release the amount to the appellant/claimant on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the appeal, being FMA 438 of 2009, stands disposed of.

All pending applications, if any, also stand disposed of accordingly.

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.)