

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 867 of 2012
with
IA No. CAN 3 of 2013 (CAN 955 of 2013)
(Application not in the file)
with
CAN 4 of 2022

National Insurance Company Limited
Vs.
Bakul Adhikari & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Co.

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

In re: CAN 4 of 2022

This application was filed by the respondents/claimants on 29th August, 2022 but the original application is not in the record. Learned advocate on behalf of the respondents/claimants has submitted a copy which is being treated as original.

In this application, a prayer is made for expunging the name of the claimant/respondent no.4, namely, Kalyani Adhikari, supported by one death certificate showing the death of Kalyani Adhikari on 5th September, 2016. It is submitted that other legal heirs are already on record.

In such circumstances, the prayer for recording the death of Kalyani Adhikari is allowed.

The Department is directed to expunge the name of the appellant/claimant no.4, namely, Kalyani Adhikari, from the Memorandum of Appeal.

The application, being CAN 4 of 2022, stands disposed of.

In re: FMA 867 of 2012

Being aggrieved and dissatisfied with the judgment and award dated 13th June, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Asansol, in MAC Case No.169 of 2007 under Section 166 of the Motor Vehicles Act, 1988 granting award of Rs.6,04,500/- along with interest @ 8% per annum from the date of filing of the claim petition, this appeal has been preferred.

The claim petition was filed on account of death of one Dayamoy Adhikari in a motor accident which took place on 31st July, 2007 at about 10.30 p.m. by the involvement of one JCB Pay Loader bearing registration no.WB-37A/0729. When the victim was returning to his home from service place, the said vehicle coming with rash and negligent manner, dashed the victim who sustained fatal injuries. He was shifted to hospital and succumbed to his injuries. The victim being the only earning member of the family, the claim petition was filed with a prayer for compensation to the tune of Rs.5,00,000/-.

The appellant/National Insurance Company Limited contested the claim application by filing written

statement, denying all material allegations made in the claim petition.

In course of the trial, three witnesses were examined on behalf of the respondents/claimants. The widow of the deceased as PW-1 corroborated the claim petition and submitted that her husband was 38 years of age and used to earn Rs.5,000/- per month. One Subrata Adhikari claimed himself to be the eyewitness to the incident being accompanied the deceased on the relevant date and time. He stated the entire incident. PW-3 was the owner of a Security Agency who has come before the learned Tribunal and proved the salary of the victim who was an employee of a Security Agency. The salary certified was admitted in evidence.

On behalf of the appellant/Insurance Company, one witness examined from the Motor Vehicles Department, Asansol as OPW-1. In course of his evidence, it appears that at the relevant point of time, the driver of the offending vehicle had no licence.

In course of the argument, learned advocate on behalf of the appellant/Insurance Company submits that there was no direction given in the order by the learned Tribunal to recover the award from the owner of the vehicle.

Learned Judge of the Tribunal on careful perusal of the authorities relied on behalf of the Insurance

Company, came to his final opinion that the claimants are entitled to get award and the Insurance Company shall make payment of compensation to the claimants at the first instance and recover the same from the owner of the vehicle, as obiter in the judgment without mentioning in the order.

None of the parties to this appeal raised any other points except omission of the order of recovery from the owner, in the column of "order". None of the parties to this appeal raised any dispute regarding quantum of award as well.

Considering the entire evidence and judgment passed by the learned Tribunal, I do not find any reason to interfere with the observation except giving liberty to the appellant/National Insurance Company Limited to recover the award from the owner of the vehicle.

It is reported on behalf of the respondents/claimants that the National Insurance Company Limited did not deposit the interest awarded by the learned Tribunal, though awarded sum of Rs.6,04,500/- has already been deposited by the appellant/Insurance Company before the office of the learned Registrar General.

In the premise set forth above, I direct the appellant/ National Insurance Company Limited to deposit interest @ 6% per annum on the awarded compensation of Rs.6,04,500/- from the date of filing of the claim petition,

i.e., on 4th December, 2007, till the date of deposit of principal amount which is lying with the office of the learned Registrar General of this Court as per the order of the learned Tribunal, within six weeks from date.

The respondents/claimants are entitled to the awarded compensation of Rs.6,04,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of principal amount.

The appellant/Insurance Company is at liberty to recover the entire awarded sum with interest from the owner of the vehicle bearing registration no.WB-37A/0729 through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The respondents/claimants will be entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the entire amount with accrued interest to the respondent/claimant nos.1, 2 and 3 on equal share on proper identification.

With the observation, the appeal, being FMA 867 of 2012, stands disposed of.

All pending applications, if 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.)