

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2011 of 2016
with
IA No. CAN 2 of 2022

Saili Ram (Devi) & Ors.
Vs.
The National Insurance Company Limited & Anr.

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

Mr. Saswata Bhattacharjee
... For the respondent no.1/Insurance Co.

In re: CAN 2 of 2022

This is an application for expunging the name of the appellant no.3, namely, Nagia Ram who died on 20th April, 2022 according to the death certificate issued on 20th April, 2022.

It is submitted by the learned advocate appearing on behalf of the appellants/claimants that the legal heirs of Nagia Ram are already on record and there are no other legal heirs of appellant no.3, Nagia Ram.

In the aforesaid view of the matter, the name of Nagia Ram, i.e., the appellant/claimant no.3, should be expunged from the cause title of the Memorandum of Appeal.

The Department is directed to do the needful accordingly.

CAN 2 of 2022 stands disposed of.

In re: FMA 2011 of 2016

This appeal is directed against the judgment and award passed on 30th November, 2011 by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Asansol, in MAC Case No.23 of 2008 whereby the learned Judge awarded compensation to the tune of Rs.13,21,500/-.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 on account of death of one Binod Ram, son of late Dhukia Ram in a motor accident occurred on 6th December, 2007 at about 9.45 p.m. when the victim was going towards Sodepur from Sitalpur on his scooter bearing registration no. WRM 1203 with one pillion rider. One Truck bearing registration no.WB-37A/4069 coming with high speed and in negligent manner dashed the said scooter from behind. As a result, the victim sustained injuries and shifted to Sanctoria Hospital where doctor declared him dead. At the time of death, he was 39 years of age and an employee of Eastern Coalfields Limited. Accordingly, the claimants filed the claim petition with a prayer for compensation to the tune of Rs.15 lacs.

In course of evidence, three witnesses were examined and among them PW-2 was eyewitness to the accident. In course of the trial, a good number of documents were admitted in evidence, including the police reports and post-mortem report.

From the entire evidence on record, including the charge sheet, I find that the accident took place due to negligence on the part of the truck bearing registration no.WB-37A/4069 duly insured with the National Insurance Company Limited.

Learned advocate appearing on behalf of the appellants/claimants did not raise any dispute regarding other issues, excepting a claim for future prospect and general damage according to the parameter laid down by the Hon'ble Apex Court.

Learned advocate appearing on behalf of the respondent/Insurance Company also did not raise any dispute regarding the claim of the appellants/claimants in this appeal but he submits that the appellant no.1 got a compassionate appointment having a monthly remuneration of Rs.10,000/- as it appears from the evidence.

In my opinion, compassionate appointment is a statutory right and it cannot be taken into account at the time of awarding compensation in a case under Section 166 of the Motor Vehicles Act, 1988.

After careful perusal of the entire evidence together with the available documents on record, I do not find any reason to interfere with the observation of the learned Tribunal, save and except few modification according to

the settled parameters laid down by the Hon'ble Apex Court.

In the aforesaid view of the matter, I propose to determine the award in modification, as follows:-

Annual Income	Rs. 1,23,000/-
Add: Future prospect (@ 50%)	Rs. 61,500/-

	Rs.1,84,500/-
Less: 1/3 rd Deduction	<u>Rs. 61,500/-</u>
Loss of dependency	Rs.1,23,000/-
Multiplier 15 (Age 39 yrs.)	x 15
	<u>Rs.18,45,000/-</u>
Add: General Damages	<u>Rs. 70,000/-</u>
	Total Rs.19,15,000/-
Less – Awarded by ld. Tribunal	<u>Rs.13,21,500/-</u>
ENHANCEMENT	Rs. 5,93,500/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation amount of Rs.19,15,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 4th February, 2008, till the deposit of the amount before the office of the learned Registrar General.

It is reported that the appellants/claimants have already received compensation amount of Rs.13,21,500/- on 19th September, 2012 as awarded by the learned Tribunal.

The respondent/Insurance Company is directed to deposit the enhanced amount of Rs.5,93,500/- along with

interest @ 6% per annum from the date of filing of the claim petition i.e., on 4th February, 2008, 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 respondent/Insurance Company is also directed to deposit interest @ 6% per annum on the amount of Rs.13,21,500/- from the date of filing of the claim petition, i.e., on 4th February, 2008, till the date of receipt by the appellants/claimants, if not already paid. It is to be noted that if any amount towards interest already paid, shall be deducted from the amount.

The appellants/claimants 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 disburse the amount to the appellants/claimants in equal share on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the appeal, being FMA 2011 of 2016, 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.)