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06.12.2022
Ct. No.237
Sourav

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 293 of 2013

Rahena Bibi Seikh & Ors.
Vs.
Oriental Insurance Company Ltd. & Anr.

Mr. Krishanu Banik
... For the appellants.

Mr. P.K. Pahari
... For the respondents.

This appeal is directed against the judgment and award passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan, in connection with MAC Case No.62 of 2008 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.6,50,000/-.

The claim petition filed on account of death of one Sk. Sahajahan aged 36 years in motor accident on 06.05.2008 by the involvement of a truck bearing no. WB-41C/6774 which was moving in a very high speed and in negligent manner through G.T. road and dashed the victim who was on the kacha portion of the road. In fact, the victim succumbed to his injury. The legal heirs of the victim filed a claim petition with a prayer for compensation to the tune of Rs. 6,50,000. The oriental insurance company contested this case by filing written statement in the claim petition contending, inter alia, that the claimants are not entitled to any compensation as prayed for.

To prove the case, claimants examined three witnesses. One is Rahena Bibi Seikh, wife of the deceased examined herself as P.W. 1. In course of her evidence, she corroborated averments of the claim petition. She stated about age and income of her husband. One Md. Anowar was examined as P.W.2 stated that on 06.05.2008 at about 10.00 p.m. while he along with the victim returning to the village through the left flank of the G.T. road and at that time the said truck driving with excessive speed and in rash manner, dashed the victim who died on the spot. One employee of Memari Municipality has been examined as P.W.3 and he proved the trade licence standing in favour of the petitioner.

In course of their evidence, a good number of documents including First Information Report, charge-sheet, Post Mortem Report, insurance policy, seizure list were admitted in evidence as exhibit 1 to 8.

Considering the entire evidence on record, learned Tribunal assessed the compensation at Rs. 3,93,500/-.

Neither the learned advocate on behalf of the appellant nor that of the insurance company advanced any argument in respect of the compensation. Learned advocate appearing for the claimants only advanced argument on the point of future prospect, deduction towards personal living expenses, interest and general damages.

In view of the principle laid down by the Hon'ble Apex Court in National Insurance Company Limited vs.

Pronay Setty, reported in 2017 SCJ 2700, I find no other alternative but to grant 40% of the income towards future prospect in terms of the age of the victim and general damage of Rs.70,000/- and 1/4th deduction towards personal living expenses in terms of family members of the deceased at the time of death.

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

Monthly Income be assessed as	Rs. 3,000/-
Annual Income be assessed as (Rs.3,000/- x 12)	Rs. 36,000/-
Future prospect be assessed 40% i.e.	Rs. 14,400/-
Total	Rs. 50,400/-
Deduction 1/4th on account of own personal Living expenses (Rs. 50,400/- -Rs. 12,600/-)	Rs. 37,600/-
Multiplier as per age of 15 (Rs. 37,800/-x15)	Rs. 5,67,000/-
General damages as per Pranay Setthi case is Rs. 70,000/- (Rs. 15,000/- for loss of estate, Rs. 15,000/- for funeral expenses Rs. 40,000/- for loss of consortium)	Rs. 70,000/-
Total	Rs.6,37,000/-
Less – Awarded amount	Rs. 3,93,500/-
Total (balance)	Rs.2,43,500/-

It is reported that claimants have already received Rs. 3,93,500/- from the insurance companies, therefore, claimants are entitled to balance amount of compensation to the tune of Rs. 2,43,500/- along with interest.

Insurance company is directed to pay the balance amount to the tune of Rs. 2,43,500/- along with interest @ 6% from the date of filing of the claim petition, i.e., on July 6, 2008 till the date of deposit before the office of the Registrar General of this Court within six weeks from the date. Insurance Company is further directed to deposit the interest @ 6% per annum on the amount of Rs. 3,93,500/- from the date of filing of the claim petition till the date of receipt of the amount, within six (6) weeks from date, before the office of the learned Registrar General, of this Court.

Claimants are at liberty to withdraw the same amount along with interest from the office of the learned Registrar General of this Court.

The learned Registrar General is requested to disburse the amount to the claimants in equal share as all the minors have attained the age of majority by the lapse of time.

With the above observation, the appeal, being FMA 293 of 2013, is disposed of.

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

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

A copy of this order be forwarded to the learned Tribunal 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.)