

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 979 of 2004

United India Insurance Company Limited
Vs.
Ram Pada Sana & Ors.

Mr. Krishanu Banik
... For the respondents/claimants

None appears on behalf of the appellant/United India Insurance Company Limited even at the time of second call.

Learned advocate appearing on behalf of the respondents/claimants is present.

This appeal is pending since 2003. Considering the pendency of the case for about 19 years, I find no reason to adjourn further. Thus, the appeal is taken up for disposal on merit in the presence of learned advocate on behalf of the respondents/claimants.

This appeal is directed against the judgment and award dated 31st July, 2003 passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan, in MAC Case No.39/152 of 2001 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation of Rs.2,50,000/-.

The claim petition arose out of an accident which took place on 27th March, 1999 at about 5.30 hours when

the victim boarded on the Tractor, bearing registration no. WB-41/2015, as helper of the same. Suddenly, the said Tractor overturned and as a result the victim died on the spot. At the time of accidental death, the victim was aged about 35 years and used to earn Rs.3,000/- per month by working as helper of the same Tractor. Accordingly, the claimants filed the claim petition with a prayer for compensation to the tune of Rs.2,50,000/-.

The appellant/United India Insurance Company Limited contested the claim petition by filing the written statement denying all material allegations in the claim petition contending, inter alia, that death of deceased was not caused by any motor accident on the relevant date by the involvement of vehicle bearing registration no. WB-41/2015 and it was not insured with the United India Insurance Company Limited at the relevant point of time.

In course of trial, the claimants examined two witnesses. PW-1, brother of the deceased, has stated about the accident and the victim boarded on the Tractor as helper. He also stated about the income of the deceased. In course of his evidence, documents viz. certified copy of charge sheet, post-mortem report, insurance policy etc. were admitted in evidence as Exhibit-1 to 5.

PW-2 saw the incident while the victim was travelling the Tractor, bearing registration no. WB-41/2015, on the relevant date. The said Tractor running at a very high speed and suddenly overturned and as a result

the victim died on the spot. He denied the suggestion that he did not see the accident.

On behalf of the Insurance Company, one Nirendra Kumar Roy, an officer of the Insurance Company, came to depose before the learned Tribunal. He specifically stated that the Tractor, bearing registration no. WB-41/2015, was duly insured with the United India Insurance Company Limited from 3rd January, 1999 to 3rd January, 2000. The witness produced the policy which was marked as Ext.-A, driving licence as Ext.-B and fitness certificate valid upto 27th October, 1994 as Ext.-C.

Learned Tribunal after considering the entire evidence on record, came to his finding that the victim died in the accident by the involvement of the Tractor and at the time of accident he was a helper, i.e., an employee of the vehicle. Learned Tribunal accordingly awarded the compensation after applying multiplier 12 to the tune of Rs.2,50,000 though assessed at Rs.3,84,000/-.

I do not find any reason to interfere with the observation regarding the accident alleged to have been taken place on 27th March, 1999 at about 5.30 hours as it has been proved by the evidence of PW-2. That apart, the accidental death of the victim was further substantiated by the documents viz. the FIR and charge sheet (Exts.-1 and 5).

In course of argument, learned advocate on behalf of the respondents/claimants has submitted that there are sufficient evidence in the record to show that the victim was an employee/helper of the Tractor at the relevant point of time and there was insurance coverage in respect of the employee in the policy and for which Rs.15/- was received as premium. After careful perusal of the policy (Ext.-4), I find that persons employed in connection with operation and/or loading, unloading of motor vehicle are covered under the policy.

From the claim petition as well as the evidence, it appears that at the relevant point of time the victim was a helper/employee of the vehicle. Therefore, I cannot hold that the victim was gratuitous passenger of the vehicle.

In that view of the circumstances, I find no reason to interfere with the judgment passed by the learned Tribunal in assessing the compensation to the tune of Rs.3,84,000/- after applying the notional income of Rs.3,000/- per month and applying multiplier 12 in terms of age of the victim at the time of death. But I am not agreeable with the learned Tribunal regarding promulgation of final award of Rs.2,50,000/- out of total compensation assessed at Rs.3,84,000/-.

Here in this case, the just compensation was assessed at Rs.3,84,000/- but the learned Tribunal awarded Rs.2,50,000/- out of Rs.3,84,000/- in terms of prayer of the claim petition.

It is trite law that Court must have to assess just compensation and to be awarded accordingly irrespective of claim in the petition.

Considering all the facts and circumstances, the respondents/claimants are entitled to compensation to the tune of Rs.3,84,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

It is seen from the record that the appellant/Insurance Company has already deposited Rs.25,000/- as statutory liability on 17th May, 2004 and also deposited the awarded amount of Rs.2,50,000/- on 23rd September, 2004.

Therefore, the appellant/Insurance Company is directed to deposit Rs.1,09,000/- (Rs.3,84,000/- – Rs.2,75,000/-) along with interest @ 6% per annum from the date of filing of the claim petition till deposit before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondents/claimants are entitled to withdraw the entire amount with accrued interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.1,09,000/- (Rs.3,84,000/- – Rs.2,50,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 979 of 2004, is disposed of on merit.

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.)