

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 884 of 2013

**Smt. Soro @ Suro Bala Sarkar & Ors.
Vs.
The New India Assurance Company Ltd. & Ors.**

Mr. Krishanu Banik

... For the appellants.

Mr. Gopa Das Mukherjee

... For the respondents.

This appeal is directed against the judgment and award passed on 21st April, 2012 by the learned Judge, Motor Accident Claims Tribunal, Balurghat, in connection with MAC Case No.105 of 2010 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.1,30,000/-.

In fact, the claim case arose on account of accidental death of one Banchha Sarkar by the involvement of a tractor bearing no. WB-61/4261 and a trolley bearing no. WB-61/4276.

On June 15, 2010 at about 13.00 hours the victim was standing on the left side of the kancha portion of the road at Purba Haldar Para Bandh More. At that time, the vehicle bearing no. WB-61/4261, the tractor attached with trolley bearing no. WB-61/4276 was coming from Gangarampur side at a very high speed in rash and negligent manner. In effect, the vehicle lost its control and went down to a kancha portion of the road and dashed the

victim who died on spot. After the accident, Gangarampur P.S. Case No. 202/2010 dated 15.06.2010 under Sections 279/338/304A of the Indian Penal Code was started against the driver of the vehicle and ended with charge-sheet.

Insurance Company contested the case by filing written statement denying all material facts alleged in the claim petition contending, *inter alia*, that claimants are not entitled to any compensation.

To prove the case, claimants examined two witnesses. One is Pradip Sarkar, P.W. 1 who narrated the entire incident including the age and income of the deceased at the time of death. Another witness, namely, Debasish Barman was examined as P.W. 2 who claimed himself as eye-witness to the accident. In course of examination-in-chief, he stated the entire incident and he stated that the accident took place due to rash and negligent manner of the vehicle. In course of their evidence, a good number of documents including First Information Report, charge-sheet, Post Mortem Report, insurance policy, seizure list etc., were admitted in evidence as exhibit 1 to 6.

Considering the evidence on record, learned Tribunal assessed notional income of Rs. 15,000/- per annum and assessed the compensation at Rs. 1,30,000/-.

Mr. Krishanu Banik, learned advocate appearing for the appellants has contended that learned Tribunal should have taken Rs. 3,000/- per month as notional

income as this is a case of the year 2010. Mr. Banik has further submitted that learned Tribunal did not consider the general damage of Rs. 9,500/- and also did not consider any interest on the compensation amount.

In opposition to that, Ms. Gopa Das Mukherjee, learned advocate appearing for the respondents has supported the judgment passed by the learned Tribunal.

This is a case under Section 163A of the Indian Penal Code and I find no necessity to go into the evidence to find out the rash or negligence act on the part of the driver of the vehicle. However, the oral evidence of P.W.s 1 and 2 together with the charge-sheet, FIR and seizure list clearly prove that accident took place by the involvement of the aforesaid vehicle and in effect one Banchha Sarkar died. Therefore, claimants are entitled to compensation.

From the judgment passed by the learned Tribunal, it appears that notional income of Rs. 15,000/- was taken into account to assess the compensation but I am agreeable with Mr. Banik with regard to the notional income of Rs. 3,000/- to assess compensation for the motor accident occurred in the year 2010. It is also pertinent to mention here that claimants are also entitled to general damage of Rs. 9,500/- in total.

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/-

Deduction 1/3 rd on account of own personal Living expenses (Rs. 36,000/- -Rs. 12,000/-)	Rs. 24,400/-
Multiplier as per age of 13 (Rs. 24,000/-x13)	Rs. 3,12,000/-
General damages as per second schedule is Rs. 9,500/- (Rs. 2,500/- for loss of estate, Rs. 2,000/- for funeral expenses Rs. 5,000/- for loss of consortium)	Rs. 9,500/-
Total	Rs.3,21,500/-
Less – Awarded amount	<u>Rs. 1,30,000/-</u>
Total (balance)	Rs.1,91,500/-

Therefore, claimants are entitled to balance amount of Rs. 1,91,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on July 26, 2010 and also the interest on the amount already received @ 6% per annum from the date of filing of the application till the date of receipt of the amount of Rs. 1,30,000/-.

Accordingly, the Insurance Company is directed to pay the balance amount of Rs. 1,91,500/- to the claimants along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the said amount before the office of the learned Registrar General of this Court. The Insurance Company is also directed to pay the interest @ 6% per annum on the amount of Rs. 1,30,000/- already received by the claimants from the date of filing of the application till the date of receipt of the amount by the claimants.

Insurance Company is directed to deposit all balance amount before the office of the learned Registrar General within six weeks from the date of this order.

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

The learned Registrar General is requested to disburse the amount to the appellant nos. 1 to 3 in equal share on proper identification.

With the above observation, the appeal, being FMA 884 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.)