

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 510 of 2007
with
IA No. CAN 2 of 2008 (CAN 4970 of 2008)
with
CAN 3 of 2010 (CAN 9845 of 2010)
with
CAN 4 of 2013 (CAN 3091 of 2013)
(Applications are not in the file)

Smt. Nihar Bala Singh @ Sinha & Ors.
Vs.
Biswajit Bhowmik & Ors.

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

Mr. Parimal Kumar Pahari
... For the respondent no.4/Insurance Co.

Being aggrieved by and dissatisfied with the judgment passed on 8th May, 2006 by the learned Judge, Motor Accident Claims Tribunal, Additional District & Sessions Judge, 2nd Court, Tamluk, Purba Medinipur in MAC Case No.55/1036 of 2005/2004, the claimants filed this appeal on the ground that the learned Tribunal failed to appreciate the evidence on record as well as the averments of the claim petition, particularly in Column No.16.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 arose out of an accident alleged to have been taken place on 27th September, 2004 at about 6 p.m. while the victim was standing on the left side at Howrah Mini Bus Stand, Calcutta. At that time one Mini Bus

bearing registration no. WB-24-A/1236 was placing the vehicle to start its journey, then suddenly one Mini Bus bearing registration no.WB-24-A/7069 coming from the opposite side with rash and negligent manner and dashed the said Mini Bus about to start its journey. As a result, the victim sustained serious injury on his person and died on the spot. The accident took place for the rash and negligent driving of the both the vehicles duly insured with the National Insurance Company Limited. According to the claim petition, the deceased was a retired pension-holder and businessman having income of Rs.5,000/ per month.

Learned Tribunal dismissed the claim petition only on the ground of averments of Column No.23 of the claim petition. It comes to my view that actually there was no involvement of third vehicle and it was a printing mistake and thereby vehicle no.WB-25-A/1236 was mentioned mistakenly instead of WB-24-A/1236. For that reason, the learned Tribunal came to its finding that there was inconsistency regarding involvement of vehicles in the accident.

On careful perusal of the judgment and claim petition, I am of the opinion that the learned Tribunal should have gone through Column Nos.16 and 23 very carefully and then could have identified the printing mistake of the vehicle no.WB-24-A/1236.

In course of evidence, three witnesses were examined in this case. PW-1 and PW-3 proved the accident

alleged in this case and PW-2 proved the salary of the deceased at the time of retirement who was 72 years of age. From the evidence of PW-2, it is found that he used to draw salary at the time of retirement at Rs.2,055/-.

Learned advocate appearing on behalf of the appellants has tried to make this Court understand that after the retirement, i.e., at the age of 72 years, he was also engaged in work as day labourer and used to earn further Rs.3,000/- per month.

On careful perusal of the entire evidence of PW-2 and also considering the age of the deceased, I am not inclined to accept the argument advanced on behalf of the appellants.

Considering all facts and circumstances, I assess the monthly income of the deceased, at the time of death, at Rs.3,000/- per month.

It is needless to mention that the accident took place due to involvement of two vehicles duly insured by the same Insurance Company, i.e., the National Insurance Company Limited.

In the aforesaid view of the matter, the appellants/ claimants are entitled to compensation determined as follows:-

Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3 rd Deduction	Rs. 12,000/- -----

	Rs. 24,000/-
Multiplier 5 (Rs.24,000/- x 5)	Rs.1,20,000/-
Add: General Damages	<u>Rs. 70,000/-</u>
Total	Rs.1,90,000/-
Less – Awarded by Id. Tribunal	<u>Rs. 50,000/-</u>
ENHANCEMENT	Rs.1,40,000/-

For the reasons, it is seen that the appellant/claimant no.1 is entitled to the enhanced compensation Rs.1,40,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 16th November, 2004, till the deposit of the amount before the office of the learned Registrar General.

The respondent no.4/Insurance Company is directed to deposit the enhanced amount of Rs.1,40,000/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 16th November, 2004, till the actual deposit of the amount before the office of the learned Registrar General of this Court within six weeks from the date of this order.

The appellant/claimant no.1 will be entitled to withdraw the enhanced amount with interest.

The learned Registrar General will disburse the amount to the appellant/claimant no.1 on proper identification.

With the above observation, the appeal, being FMA 510 of 2007, stands disposed of.

All pending applications, if there be 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.)