

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1050 of 2013

Ranjit Dasgupta & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mondal
... For the appellants/claimants

Mr. Sanjay Paul
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order passed on 31st May, 2012 by the learned Judge, Motor Accident Claims Tribunal, City Civil Court, 4th Bench at Calcutta in connection with MJC Case No.470 of 2008 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.1,29,500/-.

On 8th May, 2008 at about 18 hours the victim Dr. Anima Dasgupta was crossing Surya Sen Street and Amherst Street when one Bus, bearing registration no.WB-04/7333, of Route No.3C/1, moving with high speed and rash and negligent manner from north to south and also try to overtake another bus and knocked down the victim. In effect, she sustained severe injury and taken to Medical College and Hospital where she was declared dead. After the incident, Muchipara Police Station Case No.116 dated 8th May, 2008 under Sections 279/304A of the Indian

Penal Code was started and ended with charge sheet. The claim petition was filed with a prayer for compensation to the tune of Rs.12,00,000/-.

The respondent no.1/Insurance Company contested the claim petition by filing written statement denying all material allegations in the claim petition contending, inter alia, that the claimants are not entitled to any compensation.

In course of trial, three witnesses were examined, namely, Soumyajit Dasgupta was examined as PW-1. In course of his evidence, he stated about the accident, age and income of the deceased. He also stated in his evidence that the deceased was his mother and she was the main earning member of the family and he further stated that his mother was 65 years of age at the time of death and was a medical practitioner having degree of MBBS and before retirement she was a doctor of Calcutta Medical College and Hospital.

PW-2 claiming himself to be an eye-witness has stated in his evidence that he had seen the accident and at the relevant point of time he was standing there to return back to his residence.

PW-3 Senior Executive of Shankar Netralaya came to depose in support of the income of the deceased. He stated in his evidence that Dr. Dasgupta used to earn Rs.34,000/- per month as professional fees. But in his

cross-examination, he stated that the tenure of service of Dr. Dasgupta for three months from 8th February, 2008 as per offer letter and from the date of her joining.

Learned Tribunal after considering the entire evidence on record came to return his finding that the claimants succeeded to prove the accidental injury sustained by the deceased due to rash and negligent driving of the Bus. Learned Tribunal assessed the monthly income of Dr. Dasgupta as Rs.3,000/- per month and assessed the total compensation as Rs.1,29,500/-.

Mr. Jayanta Kumar Mondal, learned advocate, appearing on behalf of the appellants/claimants contended that the learned Tribunal wrongly assessed the monthly income of Rs.3,000/- per month as the deceased was a MBBS doctor and used to earn Rs.34,000/- from the Medical Research Centre as well as the deceased used to earn Rs.10,000/- per month as pension from her earlier service at Medical College and Hospital.

Mr. Sanjay Paul, learned advocate, appearing on behalf of the respondent no.1/New India Assurance Company Limited has submitted that in this case appellants/claimants could not produce any single document in favour of either employment of the deceased at Medical College and Hospital or the employment in the Medical Research Centre on the relevant date i.e., on 8th May, 2008. Mr. Pal has referred to the evidence of PW-3, particularly, the cross-examination where the Senior

Executive of Shankar Netralaya stated that as per the offer letter (Ext.14 and 15), her service period was for three months from the date of her joining and he has further stated that her tenure started from 8th February, 2008. Accordingly, Mr. Paul has contended that her service expired on 7th May, 2008 and the accident took place on 8th May, 2008. Mr. Pal has further submitted that there is no evidence on record that her service was extended further on consent of the parties.

As a matter of fact, no argument was advanced with regard to the accidental death of the victim Dr. Anima Dasgupta and it is also not disputed in this appeal that the accident took place due to rash and negligent driving of the Bus, bearing registration no.WB-04/7333, which was duly insured with the New India Assurance Company Limited.

Argument has been advanced by the learned advocates only on the point of income of Dr. Anima Dasgupta at the time of her accidental death.

During evidence of PW-1, son of the deceased, has stated that her mother was employed in the Medical College and Hospital and after retirement she joined in Shankar Netralaya and he has further stated in his evidence that her mother used to draw pension after retirement.

From the record, I do not find any single document showing a receipt of pension by Dr. Anima Dasgupta. That

apart, I also do not find any document showing employment of Dr. Anima Dasgupta, since deceased, in the Medical College and Hospital. Though PW-3 has deposed in favour of the claimants showing monthly remuneration of Dr. Anima Dasgupta but it is admitted position from the evidence of PW-3 (Senior Executive of Shankar Netralaya) and Exhibit-14 and Exhibit-15 that the period of employment in the Shankar Netralaya was for three months and the period expired on 7th May, 2008. Therefore, it cannot be said that Dr. Anima Dasgupta was in service in Shankar Netralaya on the alleged date of accident i.e., on 8th May, 2008.

In these circumstances, I am sorry to say that the appellants/claimants could not prove the actual income of Dr. Anima Dasgupta on 8th May, 2008 when accident took place. But considering the degree of Dr. Anima Dasgupta, I do not find any reason to restrict the monthly income within Rs.3,000/-.

Considering the facts and circumstances, I determine the monthly income of Dr. Anima Dasgupta as Rs.6,000/- and also determine the compensation as per separate heads after applying the multiplier 7 in terms of the age, as follows:-

Monthly Income	Rs. 6,000/-
Annual Income (Rs.6,000/- x 12)	Rs. 72,000/-
Less: 1/3 rd Deduction (personal expenses) (Rs.72,000/- Rs.24,000/-)	Rs. 48,000/-
Multiplier by 7 (Rs.48,000/- x 7)	<u> x 7 </u> Rs.3,36,000/-

Add: General Damages	<u>Rs. 70,000/-</u>
Total	Rs.4,06,000/-
Less – Awarded by ld. Tribunal	<u>Rs.1,29,500/-</u>
ENHANCEMENT	Rs.2,76,500/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation of Rs.4,06,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 13th June, 2008 till the deposit.

It is reported that the appellants/claimants have already received Rs.1,29,500/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.2,76,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 13th June, 2008 till the deposit of the amount.

Accordingly, the respondent no.1/Insurance Company is directed to deposit the enhanced amount of Rs.2,76,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 13th June, 2008 till the 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 appellants/claimants are entitled to withdraw the balance amount with interest.

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 1050 of 2013, stands disposed of.

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.)