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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1187 of 2014

Smt. Dharitri Banerjee & Ors.
Vs.
Charan Singh & Anr.

Mr. Hemendra Krishna Guha Roy
Ms. Sunandita Ghosh
Mr. Sujoy Guha Roy
... For the appellants/claimants

Mr. Sanjay Paul
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgment and order dated 18th April, 2013 passed by the learned Judge, 10th Bench, Motor Accident Claims Tribunal, City Civil Court, Calcutta, in connection MJC Case No.120 of 2008 under Section 166 of the Motor Vehicles Act, 1988.

The claim case arose out of an accident which took place on 30th December, 2007 at about 17.00 hours of Ghoshpara Road near Pincall More in front of Kadir Bedding Shop. At the relevant point of time, the victim Dr. Malay Banerjee was travelling in his motor cycle, bearing registration no.WB-16P/1492, and one Lorry, bearing registration no.PB-23E/3272, coming from the opposite side at a very high speed dashed the motor cycle of Dr. Malay Banerjee after overtaking a cycle van. As a result, Dr. Malay Banerjee sustained severe injury and he was shifted to Dr. B.N. Bose S.D. Hospital for treatment but he succumbed to his injuries in the said hospital. The accident took place due to rash and negligent act on the part of the driver of the Lorry. That is why the claimants filed the claim petition claiming compensation to the tune of Rs.14,63,020/-. According to the claim petition, Dr. Malay Banerjee was a doctor and was a specialist in the treatment of eyes and attached to several optic centres. The Lorry was insured with the Oriental Insurance Company Limited.

The Oriental Insurance Company Limited contested the claim petition by filing written statement denying all averments made in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation in this case.

To prove the case, two witnesses were examined. The wife of the deceased examined as PW-1 who corroborated all the statements made in the claim petition. She also testified that at the time death, her husband was aged about 37 years. In course of her evidence, certified copy of First Information Report, charge sheet, insurance policy, documents of the offending vehicle, post-mortem report, driving licence, certificates showing qualification of Dr. Malay Banerjee, original copy of Income Tax Returns and voters identity card were all admitted in evidence as Exhibit-1 to 14.

One Md. Idris was examined as PW-2 who claimed himself to be an eye-witness of the incident. He specifically stated that the accident took place due to rash and negligent driving of the Lorry at the time of overtaking one cycle van. In cross-examination, he denied the suggestion thrown to him on behalf of the Insurance Company.

Learned Tribunal, after considering the entire evidence on record, did not rely on the Income Tax Returns and assessed the income of the deceased as Rs.80,000/- per annum. According to the learned Tribunal, the deceased was a doctor by profession and also considering the self-assessed Income Tax Returns, he returned his finding recording income to the extent of Rs.80,000/- per annum. Learned Tribunal only assigned the reason of his finding in view of the occupation of the victim and self-assessed Income Tax Returns.

I am unable to agree with the said observation of the learned Tribunal as I do not find any reason to disregard the income stated in the Income Tax Returns which was received by the Income Tax Department as it appears from the seal of the Income Tax office. Not only that, the Income Tax Returns were submitted before the Income Tax office prior to his death. In fact, there is no reason behind his excessive amount of income showing in the Income Tax Returns, that too prior to his death. It is not disputed that at the time of death, the deceased was a doctor/eye specialist and he was engaged in different optic centres and he submitted Income Tax Returns showing his income.

In these circumstances, I do not agree with the submission advanced on behalf of the Insurance Company that the Income Tax Returns were not substantiated by any evidence of the officials of the Income Tax Department. So, I determine the income of the deceased as Rs.1,00,000/- after deduction of LIC premium.

With regard to the accident, the learned Tribunal took sentences from examination-in-chief of PW-2 to testify that “in head on collision” causing serious injury to Dr. Malay Banerjee but ignored the actual facts of accident stated by the PW-2 (eye-witness) who has stated that accident took place due to overtaking of a cycle van by the Lorry which was coming with very high speed from the opposite direction. That apart, FIR also shows that at the time of accident, the Lorry, bearing registration no.PB-23E/3272, was running with very high speed and in reckless manner, dashed the motor cycle and that was further substantiated by the charge sheet filed against the driver of the Lorry.

After considering the evidence of eye-witness (PW-2), FIR and charge sheet, I, by no stretch of imagination, can come to any conclusion that the accident took place due to “head on collision” between the Lorry and the motor cycle. Therefore, the question of deduction of liability does not arise.

Accordingly, I modify the compensation as follows:-

Annual Income	Rs. 1,00,000/-
Add: Future prospect 40%	Rs. 40,000/-
	Rs. 1,40,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 46,667/-
	Rs. 93,333/-
Multiplier 15 (Rs.93,333/- x 15)	X 15
	Rs.13,99,995/-
Add: General Damages	Rs. 70,000/-
Total	Rs.14,69,995/-
Less – Awarded by ld. Tribunal	Rs. 6,92,124/-
ENHANCEMENT	Rs. 7,77,871/-

In the aforesaid view of the matter, the appellants/ claimants are entitled to compensation of Rs.14,69,995/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 18th February, 2008 till the deposit of the same.

It is reported that the appellants/claimants have already received Rs.6,92,124/- from the respondent no.2/ Insurance Company as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.7,77,871/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 18th February, 2008 till the deposit of the amount.

Accordingly, the respondent no.2/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.7,77,871/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 18th February, 2008, 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 appellants/claimants are entitled to withdraw the 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 1187 of 2014, 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.)