

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 788 of 2011

Smt. Sulata Samanta & Ors.
Vs.
The Oriental Insurance Company Ltd. & Anr.

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

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 26th March, 2010 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Medinipur, in MAC Case No.61 of 2008/318 of 2007.

On 17th May, 2006 at about 11 p.m. while the deceased was returning to his house by riding motor cycle and when he reached near Basanta Kumari Girl's High School, at the time one offending vehicle, bearing registration no.WB-34-J/5888 was coming with high speed and in rash and negligent manner, dashed the deceased from behind. As a result, the deceased Bankim Samanta sustained severe injury and taken to Ghatal SD Hospital where he succumbed to his injuries.

Thereafter, one claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the wife, minor

child and the mother of the deceased claiming compensation to the tune of Rs.5,00,000/-.

Owner of the offending vehicle did not contest the claim petition but the Insurance Company entered appearance in the claim case by filing written statement denying all material allegations of the claim petition contending, inter alia, that the claimants are not entitled to any compensation.

In course of trial, four witnesses were examined. The wife of the deceased examined as PW-1 who corroborated the entire facts of the claim petition. She further testified that at the relevant point of time, her husband was 31 years old and used to earn Rs.8,000/- per month from his profession.

PW-2 claiming himself to be an eye-witness testified that he saw the accident near Basanta Kumari Girl's High School by the involvement of one vehicle, bearing registration no.WB-34-J/5888, which was running very rashly and negligently.

PW-3 proved one certificate issued by Ghatal Municipality.

PW-4 stated about profession of the deceased.

In course of their evidence, certified copy of FIR, charge sheet, voters identity card, seizure list, original death certificate and copy of post-mortem report were admitted in evidence as Exhibit-1 to 8.

After considering the evidence on record, the learned Tribunal assessed the compensation to the tune of Rs.2,74,000/- towards compensation.

Being aggrieved by and dissatisfied with the said judgment and award, the claimants preferred this appeal with a prayer for enhancement of compensation.

In course of argument, Mr. Krishanu Banik, learned advocate appearing on behalf of the appellants/claimants has contended that the learned Tribunal should have taken the monthly income of Rs.3,000/- as notional income instead of Rs.2,000/- per month as it is a case of the year 2006. That apart, Mr. Banik prays for future prospect and general damages, which were not considered by the learned Tribunal.

Mr. Parimal Kumar Pahari, learned advocate, appearing on behalf of the respondent no.1/Insurance Company has supported the judgment passed by the learned Tribunal.

On careful perusal of the evidence on record, I do not find any necessity to discuss the accident alleged in this case which was proved by the evidence of PW-2 together with the formal FIR and charge sheet. Learned Tribunal rightly observed regarding negligent driving of the vehicle, bearing registration no.WB-34-J/5888.

But, so far as the income of the deceased is concerned, it is true that no evidence was adduced to

substantiate the income of Rs.8,000/- per month at the relevant point of time and in that case the learned Tribunal should have taken the notional income of Rs.3,000/- per month instead of Rs.2,000/- per month. That apart, the appellants/claimants are entitled to future prospect to the extent of 40% of the income of the deceased and general damages of Rs.70,000/- in view of the principles laid down by the Hon'ble Apex Court.

Considering the aforesaid facts and circumstances, I find it justified to modify the award as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect 40%	Rs. 14,400/-

	Rs. 50,400/-
Less: 1/3 rd Deduction	Rs. 16,800/-

	Rs. 33,600/-
Multiplier 16 (Rs.33,600/- x 16)	X 16

	Rs.5,37,600/-
Add: General Damages	Rs. 70,000/-

Total	Rs.6,07,600/-
Less – Awarded by ld. Tribunal	Rs.2,74,000/-

ENHANCEMENT	Rs.3,33,600/-

In the aforesaid view of the matter, the appellants/claimants are entitled to compensation of Rs.6,07,600/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 9th October, 2007 till the deposit of the same.

It is reported that the appellants/claimants have already received Rs.2,74,000/- from the respondent no.1/ Insurance Company as awarded by the learned Tribunal but no interest was received.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.3,33,600/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 9th October, 2007 till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.3,33,600/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 9th October, 2007 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 respondent no.1/Insurance Company is also directed to deposit interest @ 6% per annum on the awarded amount of Rs.2,74,000/- by the learned Tribunal before the office of the learned Registrar General of this Court from the date of filing of the claim petition, i.e., on 9th October, 2007 till the date of deposited of the awarded amount of Rs.2,74,000/- on 10th August, 2010.

The appellants/claimants are entitled to withdraw the amount with interest, subject to payment of additional *ad valorem* court fees on Rs.1,07,600/- (Rs.6,07,600/- – Rs.5,00,000/-) 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 788 of 2011, 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.)