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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 373 of 2011
with
IA No. CAN 2 of 2012 (CAN 4727 of 2012)
(Application not in the file)
with
CAN 3 of 2013 (CAN 1518 of 2013)
with
CAN 6 of 2015 (CAN 2685 of 2015)

The New India Assurance Co. Ltd.
Vs.
Smt. Sikha Ghorai & Ors.

with

COT 25 of 2011

Smt. Sikha Ghoroi & Ors.
Vs.
The New India Assurance Company Limited

Mr. Parimal Kumar Pahari
... For the appellant/ Insurance Company in FMA 373 of 2011 & respondent no.1 in COT 25 of 2011

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
... For the respondents/claimants in FMA 373 of 2011 & appellants in COT 25 of 2011

This appeal is directed against the judgment and award passed on 31st July, 2010 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Howrah in MAC Case No.01 of 2005 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge passed an award to the tune of Rs.5,85,500/- and the respondent/New India Assurance Company Limited directed to pay the amount in the manner prescribed in the order.

Being aggrieved by the judgment and award, the New India Assurance Company Limited has preferred this appeal.

The claimants/respondents also filed one Memorandum of Cross Objection assailing the amount of the award on the ground of not allowing future prospect, general damages and percentage of statutory deduction as well as the mandatory interest on the awarded amount.

Briefly stated, the claim case arose out of an accident which took place on 13th December, 2004 at about 16.45 hours on Shyampur – Gadiyarah Road near Khalore Kalabari, while a vehicle bearing no.WB-11/A-5986 moving with high speed and in negligent manner, dashed the victim who sustained severe injury all over the body and succumbed to his injuries ultimately.

After the accident, the claim petition was filed before the leaned Tribunal under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.4 lacs along with interest thereon and New India Assurance Company as well as the owner of the vehicle were made parties to the claim petition.

During the trial of the case, claimants examined as many as three witnesses, including Sikha Ghoroi as PW-1, one eye-witness as PW-2 and the one witness as PW-3 to prove the employment of the victim at the relevant point of time. In course of their evidence, a good number of documents were admitted in evidence as Exhibits 1 to 8, including the post-mortem report, police reports and insurance policy. On the other hand, on behalf of the appellant/Insurance Company one witness was examined as OPW-1 namely Samir Kumar Saha as the Administrative Officer of New India Assurance Company Limited. In course of his evidence, three documents were marked as Ext.-A, Ext.-B and Ext.-C.

In course of argument, Mr. Parimal Kumar Pahari, learned advocate for the appellant/Insurance Company, has submitted that at the relevant point of time there was no policy coverage in respect of the vehicle in question. Therefore, the Insurance Company was not liable to pay compensation. In support of his contention, he relies on the exhibited documents admitted on behalf of the Insurance Company. That apart, he also relied on a case reported in 2008 ACJ 581 (Daddappa & Ors. v. Branch Manager, National Insurance Co. Ltd.).

On the other hand, learned advocate appearing on behalf of the claimants/respondents submitted that at the time of accident the vehicle was duly covered by insurance policy (Ext.6) and cancellation of that policy, if at all, was never informed or intimated to the insured as it appears from the evidence on record.

It is evident from the record, particularly, the evidence of OPW-1, it is seen that the policy was issued in favour of the insured showing the period from 15th December, 2003 to 14th December, 2004. He stated that the policy was cancelled and it was intimated to the Regional Transport Officer by a letter (Ext.6). This witness also testified that the issue of cancellation was also intimated to the insured/owner of the vehicle but no document has been field in support of his claim and even the letter of intimation has not been admitted in evidence.

In Daddappa (supra), the Hon'ble Apex Court exempted the Insurance Company from the liability to pay compensation where insurance policy was cancelled by the Insurance Company and that was duly communicated to the insured as well as the RTO as per postal acknowledgement. Unfortunately, in our case, no such document was even produced before the learned Tribunal to prove that the cancellation of policy was informed to the insured/owner of the vehicle involved in this case. Therefore, I am sorry to rely on the ratio of the decision of Daddappa (supra) in our case.

Considering the aforesaid evidence on record, I am not inclined to hold that the alleged vehicle was not ensured at the time of accident.

So far as the accident is concerned, both PW-1 and PW-2 have categorically stated about the accidental death of the victim on 13th December, 2004 with the involvement of the vehicle bearing no.WB-11/A-5986.

So far as the income of the victim is concerned, PW-3 has specifically stated that the victim was an employee of M/s. Royal Construction and used to ear a salary of Rs.4,000/- per month and in support of his evidence, one salary certificate has been filed and admitted in evidence as Ext.8.

Keeping an eye to the Memorandum of Cross Objection filed by the claimants/respondents, I find it appropriate to calculate the compensation as follows:-

Gross Monthly Income	Rs. 4,000/-
Annual Income (Rs.4,000/- x 12)	Rs. 48,000/-
Add: Future prospect (@ 40%)	Rs. 19,200/-
	Rs. 67,200/-
Less: 1/4th Total loss of income (5 persons)	Rs. 16,800/-
	Rs. 50,400/-
Multiplier 17 (Age 28 yrs.) (Rs.50,400/- x 17)	Rs.8,56,800/-
Add: General Damages	Rs. 70,000/-
Total	Rs.9,26,800/-
Less – Awarded by ld. Tribunal	Rs.5,85,500/-
ENHANCEMENT	Rs.3,41,300/-

From the records, it appears that the learned Tribunal awarded Rs.5,85,500/- and the appellant/ Insurance Company has already deposited the amount before the learned Registrar General before filing of the appeal.

In the aforesaid view of the matter, it is seen that the respondents/claimants are entitled to further enhanced amount of Rs.3,41,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual payment and also the accrued interest on the amount of Rs.5,85,500/- awarded by the learned Tribunal.

The appellant/Insurance Company is directed to deposit the enhanced amount of Rs.3,41,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the learned Registrar General of this Court within six weeks from the date of this order.

The respondents/claimants will be entitled to withdraw the entire amount with interest subject to payment of *ad valorem* court fees on the enhanced amount.

The learned Registrar General will release the total amount equally among the claimants/respondents no.1, 3, 4 and 5 on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the appeal, being FMA 373 of 2011 and the Cross-Objection, being COT 25 of 2011, are disposed of.

All pending applications, if any, also stand disposed of accordingly.

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.)