

22.11.2022

List – D/L.

Sl No.14.

Mithun

Ct.No.237.

IA No.CAN/1/2011 (Old No:CAN/2461/2011)

in

FMA 532 of 2011

The New India Assurance Co. Ltd.

Vs.

Nazma Bibi & Ors.

Mr. Parimal Kumar Pahari, Adv.

...for the appellant/New India Assurance Co Ltd.

Mr. Jayanta Kumar Mondal, Adv.

...for the respondent/claimants.

This is an appeal directed against the judgement and award passed in MAC Case No.1 of 2009 passed by the learned Motor Accident Claims Tribunal, District Judge, Durgapur, District: Burdwan whereby learned Tribunal awarded Rs.15,00,000/- towards compensation. The claim petition arose on account of death of one Mofizul Sk., husband of claimant No.1, on 18.11.2008 at 4:20 hours while the victim along with other members was going to Kolkata for treatment of one Hajera Bibi with vehicle bearing No.WB-40N-6455 (Bolero). When they reached near Dankuni Toll Plaza suddenly one truck bearing No.WB 41D-2945 standing in front of the said Bolero started reversing with a high speed and without any signal, dashed the said Bolero car. As a result, Mofizul Sk. received severe injuries on

his person. He was taken to Uttarpara Hospital and thereafter shifted to Peerless hospital, Kolkata where the victim died on 26.11.2008. After the accident Dankuni Police Station Case No.185 of 2008 dated 18.11.2008 under Sections 279/338/427/304A of the IPC was started against the driver of the Truck bearing No. WB41D-2945 and charge-sheet was also filed accordingly against the driver of the said truck.

Insurance Company only contested the claim petition by filing written statement denying all facts delineated in the claim petition and prayed for exemption from paying compensation.

In course of trial 4 witnesses were examined i.e. claimant No.1 herself as P.W.1 who stated all the incident as well as age and income of the deceased at the time of death. She stated that at the time of death deceased used to earn Rs.1,09,880/- p.a. from his business and accordingly she claimed Rs.15,00,000/-.

P.W.2, Monuruddin Sk claimed himself to be an eye witness to the incident. He being the passenger of the Bolero car lodged FIR before the Dankuni Police Station after the incident.

Lombu Kora, Duftary of the Income Tax Office, Durgapur deposed as P.W.3. He stated about annual income as shown in the return for the Assessment year 2008-09 as Rs.1,09,880/-.

One Amit Kumar Mitra from National Neuro Science Centre, Kolkata deposed in this case as P.W.4 and proved the medical bills.

In course of evidence a good number of documents were admitted as Exbt.1 to 16. On behalf of the Insurance Company, the driver of the truck was examined as OPW 1.

Learned Tribunal considered the entire evidence on record including the documents admitted and returned his finding that claimants were entitled to compensation to the tune of Rs.15,00,000/-.

In course of argument, learned Advocate appearing on behalf of the Insurance Company has referred to evidence of OPW No.1 and tried to make this Court understand that at the time of accident the truck was stationary near Dankuni Toll Plaza and for that reason driver of the said truck was not responsible for the accident.

From the evidence of P.W.2 and FIR, it appears that P.W.2 was also travelling on the same Bolero car along with victim and others and he saw the accident and narrated the entire incident. According to P.W.2 that suddenly said truck started reversing with a high speed and dashed the Bolero car standing behind the truck. This fact was further corroborated by the investigation of the Dankuni police station case No.185

of 2008 dated 18.11.2008 and it also appears on record that after investigation charge-sheet was filed against the driver of the truck. Therefore, by no stage of imagination, I can accept the view of “stationary”.

So far as the income of the deceased is concerned, P.W.3, one of the employees of Income Tax Department proved the annual income of the deceased at the time of death by submitting returns for the Assessment year 2008-09. So I do not find any reason to disbelieve the amount of income of the victim at the time of death.

In that view of the matter, learned Tribunal rightly assessed the compensation after taking the income of Rs.1,09,880/- p.a.

With the aforesaid observations, I find no other alternative to affirm the judgment passed by the learned Tribunal in connection with MAC No.1 of 2009. Thus appeal stands dismissed.

It is reported that Insurance Company only deposit the statutory amount of Rs.25,000/- before the office of the Registrar General, High Court, Calcutta.

Thus, Insurance Company is directed to deposit the entire awarded amount along with interest @ Rs.6% per annum from the date of filing of the application till the deposit of the amount before the office of the Registrar General, within six weeks from the date of this

order, after deducting the statutory amount of Rs.25,000/-.

Claimants are at liberty to withdraw the amount.

Learned Registrar General is requested to disburse the amount among the claimants in equal share.

Let a copy of this order along with the Tribunal Record be transmitted back.

All pending applications, if there be any, stands **disposed of.**

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bibhas Ranjan De, J)