

22-06-2022
Item no.2
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

CAN No.3 of 2022
in
FMA No.1189 of 2012
The National Insurance Co. Ltd.
-vs-
Sufiya Mondal & Ors.

Mr. Tushar Kanti Mukherjee
Mr. Tapas Kumar Saha ...for the applicants
(in CAN 3/2022)

Mr. Sanjay Paul ...for the respondent/appellant

This application – CAN No.3 of 2022 – filed by respondents no.2-4 in the appeal is for expunging the name of respondent no.1, Sofiya Mondal, since deceased, and for a direction so that the rest respondents may withdraw the awarded amount of money.

I have heard learned counsels appearing for the applicants and the insurance company.

It is submitted on behalf of the appellant that the appeal has already been disposed of by a judgement dated April 8, 2022 wherein this court has observed that deduction towards the personal expenses of the victim would be to the extent of 1/4th of his annual income. But, according to him, on the demise of respondent no.1, Sofiya Mondal, such deduction should be to the extent of 1/3rd. On this score, learned counsel submits that the whole calculation as made by this court in its judgement needs modification.

It appears from the death certificate of respondent no.1 annexed to the application that Sofiya Mondal died on November 12, 2020. But, on her demise, no order has been

passed with regard to expunction of her name from the cause title.

What I find, this court by its judgement dated April 8, 2022 has disposed of the appeal treating respondent no.1 as alive.

Now, the question is whether after expunction of the name of respondent no.1, the awarded amount needs to be modified or not.

It is not in dispute that the victim-deceased Sabdar Mondal died leaving behind respondent no.1 as his wife and respondents no.2-4 as his legal heirs. Therefore, while the learned Motor Accident Claims Tribunal disposed of the claim application of the respondents-claimants, the deceased then left behind him four legal heirs. In view of this, the deduction to the tune of 1/4th share towards personal expenses is quite justified.

The right accrued to respondent no.1 to get the awarded amount, in my view, does not warrant any interference by this court. Whatever the amount of money respondent no.1 was entitled to get, would devolve upon her legal heirs.

Therefore, having heard learned counsels appearing for parties and on consideration of all aspects of the matter, I think that the application as made by respondents no.2-4 should be allowed.

Accordingly, the application is allowed. Let the name of respondent no.1, Sofiya Mondal, be expunged from the claim application, the memorandum of appeal as well as from the judgment passed by this court on April 8, 2022. Respondents no.2-4, who are the legal heirs of respondent no.1, are allowed to withdraw the amount of money as

deposited by the appellant-insurance company with this court in equal share.

CAN No.3 of 2022 is, thus, disposed of.

If respondents no.2-4 approach, The learned Registrar General of this court shall release the awarded amount of money to them immediately.

[Rabindranath Samanta, J]