34
**16.11.2022**
Ct. No.237
pg.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

**FMA 1294 of 2013**

The Oriental Insurance Co. Ltd.
Vs.
Smt. Shyamali Debnath & Ors.

**with**

**COT 39 of 2013**

Smt. Shyamali Debnath & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Parimal Kumar Pahari
... For the appellant/Insurance Co. in FMA 1294 of 2013 & respondent no.1 in COT 39 of 2013

Mr. Jayanta Kumar Mondal
Ms. Sima Ghosh
... For the respondents/claimants in FMA 1294 of 2013 & Cross-appellant in COT 39 of 2013

This appeal is directed against the judgment and award passed on 15th December, 2012 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court at Suri, District – Birbhum, in MAC Case No.45 of 2002 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.1,89,500/-.

On 26th April, 2001 at about 7.30 a.m. the husband of the claimant no.1 Bijoy Debnath sustained injury on his person in an accident by the involvement of a Bus bearing registration no.WGD-928. On the alleged date of incident, the victim was riding a bicycle through eastern side of the road near Suri bus stand. The offending vehicle coming with high speed dashed the cycle and in effect ran over the said Bijoy Debnath who died on the spot. Suri Police Station Case No.84 of 2001 dated 3rd May, 2001 under Sections 279/304A of the Indian Penal Code was started against the driver of the Bus. At the time of death, the victim was 25 years of age.

The owner filed written statement denying all material allegations contending, inter alia, that the victim committed suicide and the Insurance Company is liable to pay the compensation, if allowed.

The Oriental Insurance Company Limited also contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the petitioners/claimants are bound to prove that the policy beyond doubt.

On behalf of the claimants, four witnesses were examined. The wife of the victim was examined as PW-1, one Nasem Ali Khan was examined as PW-2 (eye-witness), one Joydeb Debnath, brother of the victim, was examined as PW-3 and one Ashok Kumar Ghosh, the then Vice-Chairman, Nalhati Municipality, was examined as PW-4. In course of their evidence, First Information Report, charge sheet, post-mortem report and xerox copy of the insurance policy were admitted in evidence. Certificate of the Chairman of the Municipality were admitted in evidence. After scrutiny of the evidence on record, the learned Tribunal came to his opinion that the claimants were entitled to compensation to the tune of Rs.1,89,500/.

Challenging the quantum on behalf of the claimants, one cross-objection has also been filed in this appeal with a prayer for enhancing the claim amount.

Learned advocate appearing on behalf of the respondents/claimants also prayed for enhancing the quantum of compensation on the ground of monthly income of the deceased, future prospect and towards non-pecuniary damages.

Learned advocate appearing on behalf of the appellant/Insurance Company has referred to the evidence of OPW-1 coupled with the documents marked as Exhibit A and Exhibit B. It is submitted on behalf of the appellant/Insurance Company that at the time of accident, there was no insurance policy so the Insurance Company is not liable to pay any compensation.

In course of the argument, learned advocate appearing on behalf of the respondents/claimants submits that at the time of accidental death of the deceased Bijoy Debnath, he used to run his family consists of four persons and he was a fruit seller having monthly income of Rs.5,000/- and that has been corroborated by the evidence of the wife of the victim. It has further been submitted on behalf of the respondents/claimants that the dispute of fake policy was not averred in the written statement so, without pleading, no such evidence could be adduced on behalf of the Insurance Company. In support of his contention, he relied on a case of **V. Ravi. v. M/s. New India Assurance Co. Ltd. & Ors.**, **1997 (2) TAC 693 (Cal)**.

So far as the fake policy is concerned, it is true that the Insurance Company contested the claim petition by filing a written statement, referred to policy, particularly, in paragraph 13 but nothing specific was mentioned in the written statement challenging the policy in any manner. Further, from evidence of OPW-1, it transpires that there was policy bearing no.034227/99/ 2000-2001 valid up to 9$^{th}$ May, 2001. From the Exhibit-B (seizure list of the police case), it appears that the insurance policy was seized and it was valid at the time of accident.

In **V. Ravi** (supra), it was observed by this Court that "question of fraud and misrepresentation arises by and between the insurer and the insured, the third party claimant is not concerned therewith." It was further observed that "remedy of the respondent may be to initiate a separate proceeding for realisation of the amount so paid by the owner of the vehicle, but keeping in view the letter and spirit of the Motor Vehicles act, we are of the opinion that a third party claimant shall not suffer therefore."

In the aforesaid view of the matter, I am unable to accept all the submissions made on behalf of the appellant/Insurance Company in terms of evidence of OPW-1 with reference to Exhibit A and Exhibit B.

On careful perusal of the evidence adduced on behalf of the respondents/claimants, I find that both PW-1, i.e., wife of the deceased, and PW-2 (eye-witness) have succeeded to prove the accident due to negligent act on the part of the driver of the Bus. That apart, wife of the deceased, i.e., PW-1 has stated in her evidence that her husband used to earn Rs.5,000/- per month from the fruit selling business but no other evidence has been adduced in support of the income of Rs.5,000/- per month.

In that view of the matter, I find that Rs.3,000/- would be justified to assess the compensation instead of Rs.15,000/- per annum. Therefore, I determine the compensation in terms of separate heads 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: 1/3rd Deduction (personal expenses) | Rs. 16,800/- |
| | Rs. 33,600/- |
| Multiplier by 18 (Rs.33,600/- x 18) | x 18 |
| | Rs.6,04,800/- |
| Add: General Damages | Rs. 70,000/- |
| Total | Rs.6,74,800/- |
| Less – Awarded by ld. Tribunal | Rs.1,89,500/- |
| ENHANCEMENT | Rs.4,85,300/- |

For the reasons, it is seen that the respondents/claimants are entitled to the total compensation to the tune of Rs.6,74,800/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the office of the learned Registrar General.

It is reported that the respondents/claimants have already received Rs.1,89,500/- along with interest as awarded by the learned Tribunal. Therefore, the respondents/claimants are entitled to the balance amount of Rs.4,85,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the office of the learned Registrar General.

Accordingly, the appellant/Insurance Company is directed to deposit the enhanced amount of Rs.4,85,300/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondents/claimants are entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.4,74,800/- (Rs.6,74,800/- – Rs.2,00,000/-) before the learned Tribunal.

The learned Registrar General will disburse the entire amount to the respondents/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 1294 of 2013 and the Cross-Objection, being COT 39 of 2013, are disposed of.

All pending applications, if there be any, also 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.)**