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

FMA 1331 of 2010
with
IA No. CAN 2 of 2010 (CAN 4470 of 2010)
with
CAN 5 of 2017 (CAN 3878 of 2017)
(Application not in the file)

National Insurance Co. Ltd.
Vs.
Smt. Padma Saha & Ors.

with

COT 29 of 2016

Smt. Padma Saha
Vs.
National Insurance Co. Ltd. & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/National Insurance Co. in FMA 1331 of 2010 & respondent no.1 in COT 29 of 2016

Mr. Krishanu Banik
... For the respondent/claimant in FMA 1331 of 2010 & appellant/cross objector in COT 29 of 2016

Mr. Sayak Majumder
... For the respondent no.4/ICICI Lombard General Insurance Co. Ltd.

This appeal is directed against the judgment and award passed on 25th August, 2009 by the learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track Court-II, Sealdah, South 24-Parganas in MAC Case No.57 of 2006 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge allowed compensation to the tune of Rs.5,22,307/- along with interest @ 6% per annum.

The claim application was filed on account of death of one Suman Saha @ Suman Kumar Saha, son of late Sudhir Saha, in a motor accident on 23rd March, 2006 at about 10.30 p.m. On the alleged date and time, the deceased was proceeding with a Maruti 800 Car bearing registration no. WB-02H-0232 from Parama Island to Chingrighata while a Hyundai Santro Car bearing registration no. WB-02N-6379 suddenly dashed the said Maruti 800 from the backside. As a result, the said Maruti Car badly damaged and Suman Saha @ Suman Kumar Saha along with other persons sustained severe injuries. Subsequently, Suman Saha @ Suman Kumar Saha died in hospital. It was alleged that the victim was young, energetic and qualified computer engineer and he was the only earning member of his family and that is why the claim application was filed with a prayer for compensation to the tune of Rs.10 lacs.

Both the Insurance Companies and owners of the vehicles were made parties to this case but both the owners of the two vehicles did not contest this case. Rather, two Insurance Companies in respect of the two vehicles contested this case by filing their respective written statements denying all material allegations in the claim petition.

In course of the trial, the claimant examined three witnesses, namely, the claimant herself Smt. Padma Saha, mother of the deceased Suman Saha @ Suman

Kumar Saha as PW-1. In course of her evidence, a good number of documents were admitted in evidence as Exhibits 1 to 21. One Surajit Sharma was examined as PW-2 and he claimed himself to be the eye-witness to the incident. One Gulu Balani claimed himself to be the employee of Embee Software Pvt. Ltd. duly authorised by the Managing Director of the company as PW-3. He proved employment and remuneration of the deceased Suman Saha @ Suman Kumar Saha. One Banhee Roy was examined as DW-1 on behalf of the ICICI Lombard General Insurance Co. Ltd. She claimed herself as employee of the Insurance Company. One Susanta Kumar Das was examined as DW-2 who claimed himself as the driver of the Santro Car.

According to the National Insurance Company Limited/appellant in FMA 1331 of 2010, the accident took place due to rash and negligent driving of the Santro Car duly insured with ICICI Lombard General Insurance Co. Ltd. and the driver of that car was solely responsible for the accident as the Santro Car moving with high speed and in negligent manner dashed the Maruti 800 Car from behind. Accordingly, police case was started, being Tiljala Police Station Case No.93 dated 24th March, 2006 under Sections 279/338/427/304A of the Indian Penal Code. It is submitted on behalf of the appellant/ National Insurance Company Limited that after investigation, charge sheet was filed against the driver of the Santro Car only. Thereby learned advocate appearing on behalf of the appellant/National Insurance Company has tried to make this Court understand that National Insurance Company is not liable to pay any compensation as it is not a case of contributory negligence.

On the other hand, learned advocate on behalf of the ICICI Lombard General Insurance Co. Ltd. submitted before this Court that the accident took place by the involvement of both the vehicles and in support of his submission, he has drawn attention of this Court to the evidence of DW-2 who has stated in his evidence that on the alleged date of accident and time, he was driving the vehicle bearing registration no. WB-02N-6379 (Hyundai Santro) through E.M. Bye-pass, when he reached near Metropolitan Housing Society under Tiljala Police Station, suddenly the driver of one Maruti 800 Car, bearing registration no. WB-02H-0232 applied sudden brake without showing any signal. As a result of which Santro Car dashed the said Maruti Car. Therefore, according to the learned advocate on behalf of the ICICI Lombard General Insurance Co. Ltd., Santro Car is not solely responsible for the accident. It is the case of contributory negligence. Accident would not have taken place if Maruti Car had not applied the sudden brake.

From the evidence adduced on behalf of the claimant, it is found that one Surajit Sharma (PW-2) was examined in this case as eyewitness to the accident. In his evidence, he has stated that on 23rd March, 2006 at about 10.30 p.m. near Metropolitan Cooperative Housing Society on E.M. Bye Pass Chingrighata Flank, the accident occurred while one Santro Car dashed the Maruti 800 Car with excessive high speed from its back side and as a result, Maruti 800 Car fell into the cannel and damaged.

According to PW-2, Santro Car was solely responsible for the accident and according to DW-2 the accident took place due to negligence on the part of both the vehicles.

According to PW-2, after the accident Maruti 800 Car fell into cannel but from the charge sheet (Ext.-3), it is found that on 23rd March, 2006 at about 22.30 hours, one Maruti Van was coming from Parama Island and proceeded towards Chingrighata through EM Bye Pass and one silver colour vehicle was coming in rash and negligent manner dashed the front side of the Maruti Car on EM Bye Pass near Metropolitan Gate No.1.

So if we consider the evidence of PW-2 as well as the accident enumerated in the charge sheet, I find glaring discrepancies. In these circumstances, I do not find any other option but to rely on the evidence of DW-2 who was the driver of Santro Car. DW-2 has stated in his evidence that all on a sudden Maruti 800 Car applied sudden brake and that is why there are no other option but to dash the said Maruti 800 Car.

However, from the evidence of PW-2, DW-2 and also police reports, I am unable to come to any conclusion that Santro Car was solely responsible for the accident.

In that view of the matter, I am unable to interfere with the observation of the learned Tribunal on the point of liability of the two vehicles.

Learned advocate on behalf of the claimant has submitted that his client has filed a Cross-Objection, being COT 29 of 2016, to this appeal on the ground that the learned Tribunal mistakenly applied multiplier 13 instead of 17 and the learned Tribunal also did not allow the future prospect and general damages.

It is pertinent to mention here that none of the Insurance Companies has disputed regarding the award of compensation.

In the aforesaid view of the matter, I propose to modify the award of compensation afresh as follows:-

Annual Income (Rs.4,500/- x 12)	Rs. 59,747/-
Add: Future prospect (@ 40%) (Rs.59,747 + Rs.23,898.80)	Rs. 23,898.80 ------------------ Rs. 83,645.80
Less: 1/2nd Deduction	Rs. 41,822.90
	Rs. 41,822.90
Multiplier 17 (Rs.41,822.90 x 17) Loss of dependency	Rs.7,10,989.30
Add: General Damages	Rs. 30,000/-

Total Rs.7,40,989.30

50% of the liability of both Insurance Co.
i.e. (Rs.7,40,990/2) = Rs.3,70,495/-

In the aforesaid view of the matter, it is seen that the claimant/cross-objector is entitled to Rs.7,40,990/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st August, 2006, till the deposit of the amount before the learned Registrar General of this Court.

Both the Insurance Companies are directed to deposit Rs.3,70,495/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the learned Registrar General of this Court within six weeks from the date of this order.

It is submitted on behalf of the ICICI Lombard General Insurance Co. Ltd. that the Insurance Company has already paid Rs.2,61,153.50 to the claimant/cross-objector after the award promulgated by the learned Tribunal.

In the aforesaid view of the matter, ICICI Lombard General Insurance Co. Ltd. is directed to pay the differential amount of Rs.1,09,341.50 along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st August, 2006, before the learned Registrar General within six weeks from the date of this order.

National Insurance Company Limited is also directed to pay Rs.3,70,495/- after deducting the amount already deposited with the learned Registrar General along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st August, 2006, till the date of deposit.

The claimant/cross-objector will be entitled to withdraw the amount with interest.

The learned Registrar General will disburse the amount to the claimant/cross-objector after calculating the accrued interest on proper identification.

With the above observation, the appeal, being FMA 1331 of 2010 and the Cross-Appeal, being COT 29 of 2016, stand disposed of.

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

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.)