

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 160 of 2011
with
IA No.CAN 1 of 2010 (CAN 218 of 2010)

Fajera Bibi & Ors.
Vs.
Oriental Insurance Company Limited & Ors.

Mr. Uday Sankar Chattopadhyay
Ms. Trisha Rakshit
Mr. Debdipto Banerjee
Ms. Rajashree Tah
... For the appellants/claimants

Ms. Gopa Das Mukherjee
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order passed on 9th April, 2008 by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan, in connection with MAC Case No.94 of 2006/172 of 2006 whereby the learned Judge awarded compensation to the tune of Rs.1,79,500/-.

The claim petition under Section 166 of the Motor vehicles Act, 1988 was filed with a prayer for compensation to the tune of Rs.7,50,000/- on account of death of one Sk. Fajel Haque @ Sk. Raju who died in a motor accident on 5th January, 2006 at about 7/7.30 a.m. by the involvement of one Tractor, bearing registration no.WB-41A/1659. The accident took place due to rash and negligent driving of the vehicle and for which the victim

sustained severe injury and admitted to Burdwan Medical College and Hospital where he succumbed to his injuries.

One of the opposite party owners contested the application by filing written statement and denying any kind of negligence on the part of the alleged vehicle.

Oriental Insurance Company Limited contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the victim was more than 35 to 40 years of age and the Insurance Company was not liable to pay any compensation.

In course of trial, two witnesses were examined, namely, Reksona Bibi, wife of the deceased, who deposed and corroborated the entire fact stated in the claim petition. PW-2 claimed himself to be an eyewitness to the accident. He stated that at the time of accident, he was standing just 50 feet away from the place of accident. He also stated that the accident took place due to rash and negligent driving of the Tractor, bearing registration no.WB-41A/1659.

None of the learned advocates appearing on behalf of the parties to this appeal disputed regarding the accident alleged in this case by the involvement of a Tractor, bearing registration no.WB-41A/1659.

Mr. Uday Sankar Chattopadhyay, learned advocate appearing on behalf of the appellants/claimants only

raised the issue of income and submitted that the learned Tribunal ought to have taken the notional income of Rs.3,000/- per month instead of Rs.15,000/- per annum. He has further submitted that Rs.9,500/- should have been granted towards general damages. Before parting with, Mr. Chattopadhyay submitted that multiplier should be 18 instead of 17.

In terms of argument advanced, I am unable to accept the reason assigned by the learned Tribunal in holding the income of Rs.15,000/- per annum as it is now a trite law that notional income should be Rs.3,000/- per month.

In the aforesaid view of the matter, I determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 12,000/-

	Rs. 24,000/-
Multiplier by 18 (Rs.24,000/- x 18)	X 18

	Rs.4,32,000/-
Add: General Damages	Rs. 9,500/-

Total	Rs.4,41,500/-
Less – Awarded by ld. Tribunal	Rs.1,79,500/-

ENHANCEMENT	Rs.2,62,000/-

For the reasons, it is seen that the appellants/claimants are entitled to the total

compensation to the tune of Rs.4,41,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

It is found from the record as well as it is reported that the appellants/claimants have already received Rs.1,79,500/- along with interest as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.2,62,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.2,62,000/- 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 appellants/claimants are entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 160 of 2011, is disposed of.

All pending applications, if there be any, 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.)