In the High Court at Calcutta
(Civil Appellate Jurisdiction)
Appellate side

S/L No. 53
16.03.2023
Ct-237
(RD)

**FMAT 2136 of 2018**

Smt. Sumita Urhao alias Munda & Anr.
Vs.
Bajaj Allianz General Insurance Co. Ltd. & Anr.

Mr. Subir Banerjee, Adv.
Mr. Sandip Bandyopadhyay. Adv.
.... For the Appellant

Mr. Rajesh Singh, Advocate

... for the Insurance Company

This appeal directed against the judgement passed by the Ld. Motor Accident Claim Tribunal, Second Court, Jalpaiguri, in connection with MAC Case No. 472 of 2008 whereby Ld. Judge awarded compensation of Rs. 2,00,000/- after taking the monthly income of the deceased as per claim petition into consideration.

This appeal has been preferred on the ground that Ld. Judge did not consider the monthly income of Rs. 2450/- of the deceased as tea garden labour at the time of death. Judgement has further been assailed on the ground that Ld. Judge disbelieved the authorization by the owner to drive the vehicle.

It is not disputed that one Shukra Urhao, a man of 45 years, died in an accident by the involvement of one motor cycle no. WB 70A/8228 on 11.12.2008 at about 6.30-6.50 p.m. on NH 31C near Daldaliya. It is also not disputed that Madarihat Police Station Case No. 306/

2008 dated 11.12.2008 under Section 279/304A IPC was started and ended with charge sheet against the driver of that motor cycle.

To substantiate the fact of accidental death of Shukra Urhao First Information Report, charge sheet & seizure list were admitted in evidence.

No argument has been advanced on behalf of the parties to this appeal on the issue of accidental death.

Now, I propose to come to the monthly income of the deceased at the time of death. Claim petition shows his monthly income as Rs. 2000/- but in course of evidence claimant (widow of the deceased) has stated about monthly income of Rs. 2450/- as a tea garden labour. To corroborate this evidence one Shankar Biswakarma was examined as PW-3 and he produced one income certificate issued by the manager of Hantapara Tea Garden, which was admitted as exhibit 8. But, in cross-examination he could not produce any salary register before the Tribunal to substantiate the amount written in the income certificate (exhibit-8).

In this situation, I am of the opinion, Ld. Judge rightly recorded the monthly income as Rs. 2000/- instead of Rs. 2450/- which was subsequently introduced in course of evidence, for the first time.

Ld. Judge rightly calculated the compensation as Rs. 2,49,500/- but, actually awarded Rs. 2,00,000/- in view of the claim as per application under Section 163A of the Motor Vehicles Act.

I am sorry to agree with the Ld. Tribunal on the issue of award ignoring the principle of just compensation. It is axiomatic that at the time of awarding compensation the amount of claim can't stand in the way. Therefore, claimants are entitled to entire calculated compensation of Rs. 2,49,500/-.

So far as the liability is concerned it was held by the Ld. Judge that at the time of accident driver of the motor cycle had no valid licence obviously relying on the evidence of OPW-1, Senior Legal Executive of the Insurance Company together with the verification certificate issued by the Deputy Collector-in-charge Copying Department, Siliguri (exhibit- D).

From exhibit D, it appears that no driving licence in favour of Depankar Sarkar (driver of the offending Motor Cycle) was ever issued. Therefore, Ld. Tribunal rightly held liability of owner and accordingly directed the owner to pay the compensation.

It is true that Insurance Company is not liable to pay any compensation but considering object of enactment of the beneficial legislation as well as principle laid down in the case of ***Oriental Insurance Co. Ltd. Vs Nanjappan & Ors.*** reported in ***(AIR 2004 SC 1630)*** and ***National Insurance Co. Vs. Swaran Sing*** reported in ***(2004 3 SCC 297)*** no option is left to this Court but to direct the Insurance Company to pay the compensation and to recover the same with interest from the owner of the motor cycle being registration no. WB 70A/8228 through execution proceeding directly instead of filing any separate suit.

In the aforesaid view of the matter, claimants are entitled to compensation to the tune of Rs. 2,49,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

Respondent/Insurance Company is directed to pay the compensation of Rs. 2,49,500/- 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 Ld. Registrar General of this Court.

Respondent/ Insurance Company is directed to deposit the amount with interest within 6 weeks form date.

Ld. Registrar General is requested to disburse the amount in favour of claimant no. 2 (smt. Sumita Urhao) and claimant no. 3. (Sunil Urhao) in equal share.

With the aforesaid observation appeal being no. FMAT 2136 of 2018 stands disposed.

All pending application, if there be any, stand disposed of accordingly.

The Tribunal Records along with a copy of this order be transmitted back immediately.

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

**(Bibhas Ranjan De)**