

16
30.01.2023
Ct. No.237
D.Hira

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 331 of 2011
with
CAN 1 of 2011 (Old No. CAN 4142 of 2011)
(Application not in file)

Rousan Bibi @ Bewa
Vs.
Oriental Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
... For the appellant/Claimant

Mr. Rajesh Singh.
... For the respondents/Insurance Company

This is an appeal directed against the judgment passed by the learned Motor Accident Claim Tribunal, Additional District Judge, 2nd Court, Malda on 28th January, 2010 in connection with Motor Accident Claim Case no. 213 of 1997 whereby learned Tribunal awarded compensation to the tune of Rs.1,34,500/-.

The claim petition under Section 166 of the Motor Vehicle Act was filed on account of death of one Sk. Sabir, a boy of fifteen (15) years, in a motor accident by the involvement of one bus bearing no. WB-65/0625 and at the time of accident the said bus was running with high speed through Manikchak-Ratua State Highway and dashed the said boy and fled away towards Ratua. As a result, the said Sk. Sabir died on spot. After the accident Manikchak Police Station Case no. 33 of 1997 dated 3rd

June 1997 under Sections 279/427/304A of the Indian Penal Code was started.

Oriental Insurance Company contested the claim petition by filing a written statement denying all averments of the claim petition contending, inter alia, that claimants are not entitled to any compensation, as prayed for.

To prove the case, two witnesses were examined, namely Rousan Bibi @ Bewa as PW 1 and one eye-witness as PW 2.

In course of their evidence, a good number of documents were admitted in evidence including FIR, Charge-Sheet, Post-Mortem Report, Insurance Policy.

After analyzing the evidence on record together with the documents filed on behalf of the claimants, learned Tribunal assessed the compensation considering income of Rs.15,000/- per annum and finally assessed the compensation to the tune of Rs.1,34,500/-.

Both the learned Advocates appearing on behalf of the parties in this appeal have submitted that in the accident two brothers died and two separate claim petitions were filed and the claim petition filed on behalf of the elder brother was disposed of in the appeal being FMA no. 350 of 2011 wherein co-ordinate Bench of this Hon'ble Court granted a compensation assessing the monthly income of Rs.2000/-.

However, after careful perusal of the evidence of PW 2 together with the documents viz., FIR, Charge-Sheet and Seizure list I find that the accident took place due to

rash and negligent driving of the bus bearing no. WB-65/0625 and which was duly ensured with the Oriental Insurance Company on the relevant date. With regard to income of the deceased, it should be assessed as Rs.2,000/- per month and accordingly, I determine the compensation as follows:-

Monthly Income	Rs. 2,000/-
Annual Income be assessed as (2,000 X 12)	Rs. 24,000/-
Future Prospect be assessed 40% i.e. Rs.	Rs. 9,600/-
Total (24,000 + 9,600)	Rs.33,600/-
1/2 nd Deduction (33,600/- - 16,800/-)	Rs.16,800/-
Use of multiplier as per deceased age 18 (16,800 X 18)	Rs.3,02,400/-
General damages	Rs.30,000/-
Total	<u>Rs.3,32,400/-</u>
Less awarded amount	Rs.1,34,500/-
	<u>Rs.1,97,900/-</u>

Thus, claimants are entitled to compensation to the tune of Rs.3,32,400/-.

Learned Advocate appearing on behalf of the claimant has submitted that claimant has already received awarded amount of Rs.1,34,500/- from the Tribunal. Therefore, claimants are entitled to balance amount of

Rs.1,97,900/- along with interest, subject to payment of ad valorem Court fees, on Rs.1,32,400 before the Tribunal.

Respondents/Insurance Company is directed to deposit the balance amount of Rs.1,97,900/- along with interest at the rate of 6 per cent per annum from the date of filing (10.11.1997) till the deposit of the amount before the Office of the Registrar General, within six (6) weeks from the date.

The learned Registrar General is requested to disburse the amount to the claimant on proper identification.

With the aforesaid observation, the instant appeal being FMA 331 of 2011 stands disposed of.

All pending applications, if there be any, stand disposed of.

Let a copy of this order and Tribunal Record be communicated to the Court of learned Tribunal 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.)