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**31.01.2023**  
Ct. No.237  
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IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**FMA 648 of 2006**  
**with**  
**IA No. CAN 2 of 2007 (CAN 2253 of 2007)**  
(Application not in the file)

Maya Bewa & Ors.  
Vs.  
The Oriental Insurance Company Ltd.

Mr. Golam Mastafa  
... For the appellants/claimants

Ms. Gopa Das Mukherjee  
... For the respondent/Insurance Company

This appeal is directed against the judgment and order dated 16<sup>th</sup> September, 2003 passed by the learned Judge, Motor Accident Claims Tribunal, 3<sup>rd</sup> Court, Murshidabad, in connection with MAC Case No.167 of 1992 whereby the learned Judge awarded compensation to the tune of Rs.1,50,000/-.

The claim petition was filed under Section 166 of the Motor vehicles Act, 1988 on account of death of one Dr. Sirajul Islam in a motor accident stated to be occurred on 21<sup>st</sup> January, 1992 while he was travelling by a Jeep, bearing registration no.WGZ-6054, along with other doctors after attending one village health fair held in Domkal School ground. At the time of returning, one Bus, bearing registration no.WMH-4704, coming from the opposite side with high speed, dashed against the jeep. As

a result, Dr. Sirajul Islam sustained severe injury on his person and immediately removed to Berhampore New General Hospital where he succumbed to his injuries. The claim petitioner was filed with a prayer for compensation to the tune of Rs.1,50,000/- and subsequently the amount was amended to Rs.3,00,000/-.

Owner of the offending bus did not contest the claim petition but the insurer, i.e., Oriental Insurance Company Limited, contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that Dr. Sirajul Islam was not the passenger of the jeep and the claimants are not entitled to any compensation.

To prove the case, the claimants examined as many as three witnesses, namely, the widow of the deceased was examined as PW-1, one Samsul Hoda was examined as PW-2 and one Habibur Mondal as PW-3. In course of their evidence, a good number of documents were admitted in evidence.

Learned Tribunal assessed the compensation taking notional income of Rs.15,000/- per annum into consideration. Learned Tribunal albeit assessed compensation at Rs.1,70,000/- but granted compensation to the tune of Rs.1,50,000/- considering amount of claim prior to amendment. That apart, learned Tribunal also did not consider towards the heads within general damages.

In course of hearing, Mr. Golam Mastafa, learned advocate, appearing on behalf of the appellants/claimants has submitted that the learned Tribunal should consider the entire assessed amount of Rs.1,70,000/- and presumably the learned Tribunal took an erroneous decision in view of the claim amount in the petition prior to amendment. It is further submitted that the amount of compensation claimed in the application was amended up to Rs.3,00,000/-. However, Mr. Mastafa, learned advocate, appearing on behalf of the appellants/claimants submitted that already assessed compensation may be given along with general damages.

Ms. Gopa Das Mukherjee, learned advocate, appearing on behalf of the respondent/Insurance Company supported the judgment passed by the learned Tribunal.

From the judgment assailed in this appeal, it appears that the learned Tribunal considered the notional income of Rs.15,000/- per annum and assessed compensation to the tune of Rs.1,70,000/- after applying multiplier 17 in terms of the age group of the deceased, i.e., 30 to 35 years, but ultimately awarded compensation to the tune of Rs.1,50,000/-.

I am not agreeable with the aforesaid observation of the learned Tribunal in view of the settled proposition of law with regard to 'just compensation'. It is settled that the learned Tribunal should consider the just compensation in

view of the facts and circumstances of each case irrespective of the claim amount.

In view of the aforesaid discussion, I am of the humble opinion that the appellants/claimants are entitled to Rs.1,70,000/- as well as Rs.9,500/- towards general damages, totaling to Rs.1,79,500/-.

Ms. Das Mukherjee, learned advocate, appearing on behalf of the respondent/Insurance Company has submitted that the appellants/claimants have already received the statutory compensation of Rs.25,000/- under Section 140 of the Motor Vehicles Act, 1988 and it is also submitted that as per her instruction, Insurance Company already deposited the awarded balance amount of Rs.1,25,000/- by depositing six cheques before the learned Tribunal.

Mr. Golam Mastafa, learned advocate, appearing on behalf of the appellants/claimants has submitted that all six cheques were lapsed in the meantime and nothing was received by the appellants/claimants in respect of balance awarded amount of Rs.1,25,000/-.

Therefore, the appellants/claimants are entitled to Rs.1,54,500/- (Rs.1,79,500/- – Rs.25,000/-) along with interest @ 6% per annum from the date of filing of the claim petition till the payment.

Accordingly, the respondent/Oriental Insurance Company Limited is directed to deposit the amount of

Rs.1,54,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of 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 respondent/Oriental Insurance Company Limited is at liberty to withdraw the cheques, if deposited, before the learned Tribunal in respect of compensation to the tune of Rs.1,25,000/-.

The learned Registrar General is requested to disburse the amount among all the appellants/claimants in the ratio as prescribed in the judgment passed by the learned Tribunal.

With the above observation, the appeal, being FMA 648 of 2006, 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.)**