

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 927 of 2009

Ali Hossain Mia & Anr.
Vs.
Oriental Insurance Company Limited & Anr.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Santanu Maji
Mr. Pronay Basak
... For the appellants/claimants

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order dated 21st August, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track 1st Court, Burdwan, in connection with MAC Case No.149 of 2006/421 of 2006 whereby the learned Tribunal awarded compensation to the tune of Rs.1,34,500/- along with interest @ 7.5% per annum under Section 171 of the Motor Vehicles Act.

The claim petition was filed on account of death of one Manik Chand Mia, a boy of 18 years, in a motor accident which took place on 12th August, 2006 at about 9.40 a.m. at G.T. Road at Kanta Pukur More near Bajan Show Room by the involvement of one Truck, bearing registration no.WB-39/1379. It is alleged in the claim petition that the accident took place due to rash and

negligent driving of the driver of the truck. At the time of death, Manik Chand Mia was a motor mechanic having income of Rs.3,000/- per month. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.4,50,000/-.

Both the owner of the vehicle and the Oriental Insurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that no accident took place by the involvement of the truck, bearing registration no.WB-39/1379.

To prove the case, the claimant no.2 Hasina Mia, mother of the deceased, examined herself as PW-1. She corroborated all the averments alluded in the claim petition and she stated in her cross-examination that at the time of accident, her son was minor.

In support of involvement of the vehicle in the accident, on behalf of the claimants, certified copy of First Information Report, charge sheet, insurance policy and post-mortem report were filed and admitted in evidence.

Learned Tribunal after considering the evidence on record granted compensation of Rs.1,34,500/- along with interest @ 7.5% per annum under Section 171 of the Motor Vehicles Act.

In course of argument, Mr. Uday Sankar Chattopadhyay, learned advocate, on behalf of the

appellants/claimants has submitted that the monthly income of the deceased was considered as Rs.15,000/- per annum as per the Second Schedule which should have been Rs.3,000/- per month.

Mr. Rajesh Singh, learned advocate, on behalf of the respondent no.1/Insurance Company has submitted that at the time of accident, Manik Chand Mia was a minor and his income cannot be considered as Rs.3,000/- per month contrary to the amount mentioned in the Second Schedule with regard to non-earning person.

Considering the entire facts and circumstances of this case, I find it justified to take Rs.2,500/- as monthly income. In that view of the matter, I determine the compensation as follows:-

Monthly Income	Rs. 2,500/-
Annual Income (Rs.2,500/- x 12)	Rs. 30,000/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 10,000/-

	Rs. 20,000/-
Multiplier by 16 (as per Second Schedule)	X 16

	Rs.3,20,000/-
Add: General Damages	Rs. 4,500/-

	Rs.3,24,500/-
Less: Awarded by ld. Tribunal & received	Rs.1,34,500/-

ENHANCEMENT	Rs.1,90,000/-

For the reasons, it is seen that the claimants/claimants are entitled to the total compensation to the tune of Rs.3,24,500/-.

It is reported that the appellants/claimants have already received Rs.1,34,500/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.1,90,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 6th September, 2006 till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.1,90,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 6th September, 2006 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 compensation amount with interest.

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

With the above observations, the appeal, being FMA 927 of 2009, 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.)