

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 149 of 2010

Smt. Chhanda Bose & Anr.
Vs.
Iffco – Tokio General Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
... For the appellants/claimants

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

This appeal is directed against the judgment and award dated 18th December, 2008 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court at Alipore, South 24-Parganas, in connection with MAC Case No.236 of 2007 whereby the learned Judge awarded compensation to the tune of Rs.14,22,860/-.

The claim petition under Section 166 of the Motor vehicles Act, 1988 filed by the claimants, i.e., legal heirs of the deceased, on account of death of one Pinak Baran Bose in a motor accident occurred on 28th September, 2002 at about 12.55 hours by the involvement of one motor cycle, bearing registration no.WB-01-S/2300, which was driving with high speed and in rash and negligent manner, dashed the deceased who was walking through the pavement, at the time of overtaking a taxi on the top of Ziral Bridge, Alipore. As a result, the victim sustained fatal injury over his body and he was taken to SSKM Hospital.

Ultimately, the said Pinak Baran Bose succumbed to his injuries. It is stated in the claim petition that at the relevant point of time Pinak Baran Bose was a professor of Panskura Banamali College in the department of Physics having income of Rs.27,311/- and he was aged about 56 years according to the school certificate (Ext.-15). That is why the claimants filed the claim petition with a prayer for compensation to the tune of Rs.24,12,000/-. After the accident, Alipore Police Station Case No.120 dated 28th September, 2002 under Sections 279/304A of the Indian Penal Code was started against the driver of the offending vehicle and ended with charge sheet.

Owner of the offending vehicle did not contest the claim petition but Iffco – Tokio General Insurance Company Limited contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation as there was no negligence on the part of the vehicle (motor cycle).

To prove the case, the claimants examined as many as four witnesses. Two widows of the deceased were examined as PW-1 and PW-2, Dr. Nirmalya Das, a colleague of the deceased, as PW-3 and one Mono Mohan Halder as PW-4.

PW-1 and PW-2 corroborated the entire averments of the claim petition and PW-3, being a professor of Panskura Banamali College, proved the salary of the

deceased by filing documents which were admitted in evidence. PW-4 saw the accident which took place at Ziral Bridge when the deceased sustained fatal injury after being dashed by one motor cycle, bearing registration no.WB-01-S/2300. After the accident, PW-4 along with others shifted the deceased to the SSKM Hospital where he succumbed to his injuries. He could identify the deceased from the Identity Card which was in the pocket of the deceased.

In course of evidence, a good number of documents were admitted in evidence, including First Information Report, charge sheet, post-mortem report, death certificate, voters identity card, particulars of the offending vehicles and salary certificate showing income of the deceased etc.

During submission, Mr. Krishanu Banik, learned advocate, appearing on behalf of the appellants/claimants, has referred to the evidence on record and submitted that the accidental death of Pinak Baran Bose has been proved by the evidence and documents exhibited in this case.

Mr. Rajesh Singh, learned advocate, appearing on behalf of the Insurance Company did not dispute the accidental death of Pinak Baran Bose. It is also not disputed that the said offending motor cycle was duly insured with Iffco – Tokio General Insurance Company Limited.

Now, to assess the compensation, I find from the evidence of PW-3 together with the documents, particularly, Exhibit-15 and Exhibit-30, i.e., Saral Form and Pay Certificate, showing gross income of the deceased at Rs.27,331/- and multiplier 9 has to be used to calculate compensation in terms of age of the deceased, i.e., 56 years.

Accordingly, I determine the compensation as follows:-

Annual Income	Rs. 4,04,343/-
Less: Income Tax + Professional Tax (Rs.89,395 + Rs.1,572)	Rs. 90,967/- ----- Rs. 3,13,376/-
Add: Future prospect (@ 15%)	Rs. 47,006/- ----- Rs. 3,60,382/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 1,20,127/- ----- Rs. 2,40,255/-
Multiplier by 9 (as per age of the deceased)	$\frac{x}{9}$ Rs.21,62,295/-
Add: General Damages	Rs. 70,000/- -----
Total	Rs.22,32,295/-
Less – Awarded by ld. Tribunal	Rs.14,22,860/- -----
ENHANCEMENT	Rs. 8,09,435/- -----

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.22,32,295/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 14th June, 2006 till the deposit of the amount.

It is reported that the appellants/claimants have already received Rs.14,22,860/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.8,09,435/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 14th June, 2006 till the deposit of the amount.

Accordingly, the respondent no.1/Iffco – Tokio General Insurance Company Limited is directed to deposit the enhanced amount of Rs.8,09,435/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 14th June, 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 award amount with interest.

The learned Registrar General is requested to disburse the amount to the appellants/claimants in the manner as prescribed in the order of the learned Tribunal on proper identification.

In case of any deficit court fees, the appellants/claimants are directed to pay the same before the learned Tribunal.

With the above observations, the appeal, being FMA 149 of 2010, 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.)