

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 375 of 2009

Parbati Murmu & Ors.
Vs.
National Insurance Company Limited & Anr.

Mr. Snehasis Jana
... For the appellants/claimants

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

This appeal is directed against the judgment and award passed on 27th May, 2008 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Paschim Medinipore, in connection with MAC Case No.227 of 2007 whereby the learned Judge awarded compensation to the tune of Rs.1,90,000/-.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of death of one Dhananjoy Murmu in a motor accident occurred on 3rd April, 2007 at about 5.45 p.m. by the involvement of one Bus, bearing registration no.WGB-4367. At the time of accident, Dhananjoy Murmu was returning home from his work place at Ghatal by a cycle. At that time, near Ghatal No.11 of Ghatal – Chandrakone Road, one Bus, bearing registration no.WGB-4367, coming from the opposite side at high speed with rash and negligent manner, dashed the said Dhananjoy Murmu who

died on spot. At the time of accident, the deceased was 24 years of age having income of Rs.3,000/- per month as a mason. The claim petition was filed with a prayer for compensation to the tune of Rs.5,00,000/-.

Owner of the offending vehicle did not contest the claim petition but the National Insurance Company Limited contested the case by filing written statement denying all averments in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation.

On behalf of the appellants/claimants, i.e., widow and parents of the deceased, two witnesses were examined. Parbati Murmu, widow of the deceased, examined herself as PW-1 who corroborated the contents of the claim petition and one Chandi Tudu as PW-2, claimed himself to be an eyewitness to the accident, testified that on 3rd April, 2007 at about 5.45 p.m. he saw the accident as he was also coming with the deceased by cycle.

In course of the evidence, certified copy of the First Information Report, charge sheet, post mortem report and photocopy of the Insurance Policy were admitted as Exhibit 1 to 4.

After considering the entire evidence on record, the learned Tribunal assessed the compensation to the tune of Rs.1,90,000/- after assessing monthly income of

Rs.1,500/- per month at the time of death of the deceased Dhananjoy Murmu.

In course of argument, none of the learned advocates appearing to this appeal advanced any argument regarding the accident or negligence on the part of the offending vehicle. That apart, from the evidence together with the certified copy of FIR and charge sheet (Exts.-1 and 2), I find no scope to discuss further on these issues.

With regard to the compensation, I find that this case arose out of an accident happened in the year 2007 and the learned Tribunal took the monthly income of Rs.1,500/- instead of Rs.3,000/- per month. That apart, the learned Tribunal did not consider the future prospect and general damages in terms of the principle laid down by the Hon'ble Apex Court in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** and **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **2017 ACJ 2700**.

In the aforesaid view of the matter, I find it necessary to modify the award as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect (@ 40%)	Rs. 14,400/-

	Rs. 50,400/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 16,800/-

	Rs. 33,600/-
Multiplier by 18 (as per age of the victim)	$\frac{x \quad 18}{Rs.6,04,800/-}$
Add: General Damages	<u>Rs. 70,000/-</u>
Total	Rs.6,74,800/-
Less – Awarded by ld. Tribunal	<u>Rs.1,90,000/-</u>
ENHANCEMENT	Rs.4,84,800/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.6,74,800/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 16th April, 2007 till the deposit of the amount.

It is reported that the appellants/claimants have already received Rs.1,90,000/- as awarded by the learned Tribunal without any interest.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.4,84,800/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 16th April, 2007 till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced amount of Rs.4,84,800/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 16th April, 2007 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 respondent no.1/Insurance Company is also directed to deposit interest @ 6% per annum on the awarded amount of Rs.1,90,000/- by the learned Tribunal from the date of filing of the claim petition, i.e., on 16th April, 2007 till the date of receipt of the amount by the appellants/claimants before the office of the learned Registrar General of this Court.

The appellants/claimants are entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.1,74,800/- (Rs.6,74,800/- – Rs.5,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the entire amount to the appellant/claimant nos.1 and 2 in equal share on proper identification.

With the above observation, the appeal, being FMA 375 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.)