

12.07.2023
SL No.7
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 469 of 2010
IA No: CAN//2010 (Old No: CAN/1892/2010)**

**Sri Jibanus Munda @ Toppo & Anr.
Vs.
The New India Assurance Co. Ltd. & Anr.**

Mr. Saidur Rahaman
...for the appellants-claimants.

Mr. Parimal Kumar Pahari
....for the respondent-Insurance Co.

The instant appeal is preferred against the judgment and award dated 26th day of February, 2009 passed by Judge, Motor Accident Claim Tribunal, 1st Court, Jalpaiguri in M.A.C. Case No. 93 of 2006.

Appellants are the parents of the deceased person aged about 23 years. The application under Section 163A was turned down by the learned tribunal against which the instant appeal is preferred.

The learned advocate for the appellant submitted before this court that the learned tribunal has not considered the materials on record and passed the erroneous order. The facts and circumstances of the case suggest that the instant proceeding was initiated under Section 163-A of the M.V. Act. In that case, the rash and negligent driving of the driver of the offending vehicle need

not be proved but the learned tribunal was of the view that the police papers i.e. charge-sheet was not filed by the claimants, thus, it was not proved that the accident caused due to rash and negligent driving of the driver of the offending vehicle. The observation of learned tribunal is also erroneous to the fact that the claimant did not say the Registered No. of the offending vehicle. He also pointed out that the learned tribunal has committed error in not allowing the compensation in favour of the claimants. He prayed for setting aside the impugned award and for just compensation.

Learned advocate appearing on behalf of the insurance company submitted before this court that the learned tribunal has committed no error. There is no perversity in the order passed by the learned tribunal. He also pointed out that the learned tribunal after considering the materials and evidence of PWs-1 and 2 and after hearing the parties, has passed the impugned order. It is speaking order so there is no chance to interfere.

Heard the learned advocate perused the materials on record it appears to me that on 12th of October 2004 at about 12 hours the deceased was proceeding towards Kumargram T.E. on foot on the left flank of the road, at the time one bus bearing No. WB-69/1816 was moving with high speed and rash and negligent manner dashed the deceased

near Kumargram T.G Chowpathi. The deceased sustained severe injuries and died on the same day.

On the basis of such accident, an FIR was lodged on the same day and police took up investigation vide Kumargram P.S. Case No. 51/04 dated 12.10.04. The body of the deceased was placed before the autopsy surgeon, after conduction of postmortem the doctor was of opinion that the deceased died on a road traffic accident and suffered massive internal hemorrhage and external hemorrhage, injuries are anti mortem in nature. This is a case, initiated under Section 163-A of M.V. Act on the principal of no fault liability. The observation of the learned tribunal regarding non-proofing of the charge sheet is not fatal to the case of the claimants. The death of the deceased due to Road Traffic Accident has sufficiently proved.

Considering the same it appears to me that the learned tribunal has committed error in rejecting the claim application of the claimants. The claimants are the parents of the deceased and they are entitled to get compensation according to the law.

In considering just and proper compensation of this case the income of the deceased is Rs. 2,100/- per month the yearly income comes to Rs. 25,200/-, $\frac{1}{3}$ rd of which is to be deducted towards personal expenses of the deceased thus the annual

dependency comes to Rs.16,800/-. The deceased was within the age group 21-25 years, according to the second schedule of Section 163-A of M.V. Act, the multiplier would be 17. After multiplying of the multiplier with the yearly dependency, the award comes to Rs.2,85,600/-. The claimants are also entitled the general damages amounting to Rs.4,500/- after adding all the heads the total compensation comes to Rs.2,90,100/-.

The insurance company is directed to pay the compensation to the claimants alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 04.04.2006. The insurance company is further directed to pay the compensation to the claimants through the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order.

Both the claimants are the parents so learned Registrar General is directed to disburse the amount in favour of both the claimants equally.

The instant FMA is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)