

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2307 of 2005
with
IA No. CAN 3 of 2013 (CAN 6841 of 2013)
with
CAN 4 of 2017 (CAN 9689 of 2017)
(Applications not in the file)

Iffco – Tokio General Insurance Company Limited
Vs.
Shobha Devi & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Company

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

This appeal is directed against the judgment and order dated 28th May, 2004 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan, in connection with MAC Case No.2 of 2004 whereby the learned Judge awarded compensation to the tune of Rs.4,53,000/- payable by the Iffco – Tokio General Insurance Company Limited.

The claim petition arose out of an application filed under Section 163A of the Motor vehicles Act, 1988 on account of death of one Sanjoy Singh, aged about 24 years, having income of Rs.3,300/- per month. On 9th September, 2002 at about 7.30 p.m. the victim was going by a motor cycle, bearing registration no.WB-01-S/3363, through G.T. Road near Sahanai Bridge within Memari Police Station, the said motor cycle met with an accident.

As a result, said Sanjoy Singh died on spot. That is why the claim petition was filed by the claimants 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 Iffco – Tokio General Insurance Company Limited contested the case by filing written statement denying all material allegations of the claim petition contending, inter alia, that the claimants are not entitled to any compensation in view of violation of policy due to no involvement of the motor cycle in the accident.

To prove the case, the mother of the deceased was examined as PW-1 who corroborated the entire averments of the claim petition and one Abul Kasem Khan was examined as PW-2 who proved the employment of the deceased. He testified that on 9th September, 2002 Sanjoy Singh along with others were coming at Burdwan Town for official duty by the Company's motor cycle, bearing registration no.WB-01-S/3363, but the said motor cycle met with an accident at Sahani Bridge on G.T. Road. In course of the trial, certified copy of the charge sheet, First Information Report and insurance policy were filed in this case.

The instant appeal has been preferred on the ground that another vehicle hit the motor cycle at the time of accident and also on the ground that motor cycle was carrying three passengers in violation of the policy and another ground that the Insurance Company is liable to

recover the compensation amount from the owner of the vehicle.

On careful perusal of the evidence of PW-1 together with documents, viz., FIR and charge sheet, I do not find any reason to hold anything contrary to the observation of the learned Tribunal regarding happening of the accident and accidental death of Sanjoy Singh.

Regarding income of the deceased, I have gone through the evidence of PW-2 and in this regard I also do not find any reason to hold otherwise than the learned Tribunal who assessed the monthly income of Rs.3,300/- per month and the learned Tribunal after applying multiplier 17 rightly assessed total compensation to the tune of Rs.4,53,000/-.

It is submitted by the learned advocate for the appellant/Insurance Company that the Insurance Company has already deposited Rs.25,000/- on 25th October, 2004 and Rs.4,28,000/- on 3rd May, 2005 before the office of the learned Registrar General of this Court.

It is reported that the respondents/claimants have already received Rs.25,000/- out of Rs.4,53,000/- and the balance amount of Rs.4,28,000/- is lying with the office of the learned Registrar General.

Learned advocate appearing on behalf of the respondents/claimants has submitted that father of the deceased, Kailash Singh, being the respondent/claimant

no.2, died on 6th July, 2015 and prays for recording the death.

Accordingly, the Department is directed to expunge the name of the respondent/claimant no.2 from the Memorandum of Appeal.

In the aforesaid view of the matter, the respondent/claimant no.1, Shobha Devi, mother of the deceased, is entitled to the balance compensation amount of Rs.4,28,000/- along with all accrued interest thereon.

The appellant/Iffco – Tokio General Insurance Company Limited is at liberty to recover the entire awarded sum from the owner of the vehicle, bearing registration no. WB-01-S/3363, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The learned Registrar General is requested to disburse the amount along with all accrued interest to the respondent/claimant no.1, Shobha Devi, on proper identification.

With the observation, the appeal, being FMA 2307 of 2005, stands 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.)