

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 220 of 2008
with
IA No. CAN 1 of 2007 (CAN 5598 of 2007)
(Application not in the file)
with
CAN 2 of 2007 (CAN 6625 of 2007)
with
CAN 3 of 2009 (CAN 4160 of 2009)
(Application not in the file)

National Insurance Company Limited
Vs.
Smt. Pratima Biswas & Ors.

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

None appears on behalf of the respondents/
claimants even on repeated calls. This appeal is pending
since 2007.

Mr. Rajesh Singh, learned advocate appearing on
behalf of the appellant/Insurance Company submitted
that the appeal may be disposed of due to long pendency.

Heard learned advocate appearing on behalf of the
appellant/National Insurance Company Limited.

This appeal is directed against the judgment and
order dated 12th February, 2007 passed by the learned
Judge, Motor Accident Claims Tribunal, Fast Track Court-
3, Alipore, South 24-Parganas, in connection with MAC

Case No.688 of 2006 whereby the learned Tribunal assessed total compensation to the tune of Rs.3,16,500/-.

The claim petition under Section 166 of the Motor vehicles Act, 1988 filed by the parents of the deceased on account of accidental death of their son Raj Kumar Biswas by the involvement of one vehicle, bearing registration no.WB-73/1961, on 26th October, 2003 at about 23 hours on the crossing of Meyo Road and Red Road under Maidan Police Station. At the time of accident, the deceased was aged about 26 years having income of Rs.4,000/- per month from service in M/s. S.B. Enterprise. Accordingly, the claim petition was filed by the parents of the deceased with a prayer for compensation of Rs.4,84,000/-.

Owner of the offending vehicle did not contest the claim petition but National Insurance Company Limited contested the case by filing written statement denying all material allegations of the claim petition contending, inter alia, that the deceased being a gratuitous passenger, the Insurance Company is not liable to pay any compensation to the claimants.

To prove the case, claimants examined two witnesses, namely, Pratima Biswas, i.e., mother of the deceased, as PW-1 who corroborated all factum of accident and other material averments of the claim petition and one Krishna Manna was examined as PW-2 who proved the employment of the deceased. He testified that the deceased used to get nearly Rs.4,000/- per month.

In course of trial, certified copy of the First Information Report, charge sheet, post-mortem report, policy of the offending vehicle and certificate of registration of the company, namely, M/s. S.B. Enterprise etc. were admitted in evidence.

From the record, I find that on behalf of the claimants, no witness was adduced to prove the manner of accident. It is needless to mention that PW-1 did not see the accident. In these circumstances, looking back to the FIR, I find that accident took place in the crossing of Meyo Road and Red Road while a Matador dashed a road divider and overturned on the North-eastern part of Red Road thereby "Kali emmersioners", namely, Raj Kumar Biswas and twelve other persons received severe injury in their persons. Therefore, it is needless to mention that Raj Kumar Biswas was travelling by the Matador, bearing registration no.WB-73/1961, as gratuitous passenger in violation of insurance policy.

Be that as it may, it is now trite law that the Insurance Company is liable to pay the compensation to the claimants and must have a right to recover the compensation amount from the owner of the offending vehicle.

So far as the accident is concerned, after carefully perusal of the charge sheet and FIR, it do not find any reason to disbelieve the factum of accident by the

involvement of Matador, bearing registration no.WB-73/1961. So, in this matter, I find that the learned Judge of the Tribunal rightly returned his finding that said Raj Kumar Biswas died in a motor accident by the involvement of a Matador, bearing registration no.WB-73/1961.

So far as the income of the deceased is concerned, the respondents/claimants could not produce any documentary evidence showing income of Rs.4,000/- per month by the deceased at the time of death. Accordingly, learned Tribunal rightly assessed notional income of Rs.3,000/- per month and finally assessed at Rs.3,16,500, out of which respondents/claimants already received Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988.

It is submitted by the learned advocate for the appellant/Insurance Company that the Insurance Company has already deposited Rs.25,000/-on 1st August, 2007 and Rs.2,41,500/- on 2nd July, 2008 before the office of the learned Registrar General of this Court.

Therefore, the respondents/claimants are entitled to the balance compensation amount of Rs.2,66,500/- along with all accrued interest thereon.

The appellant/National Insurance Company Limited is at liberty to recover the entire awarded sum from the owner of the vehicle, bearing registration no. WB-73/1961, 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 respondents/claimants in equal share on proper identification.

With the observation, the appeal, being FMA 220 of 2008, stands disposed of no merit.

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.)