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FMA 1026 of 2009
IA No. CAN 1 of 2010 (Old No. CAN 7119 of 2010)

Sabina Yasmin @ Sabina Yasmin Bibi & Ors.
Versus
The National Insurance Com. Ltd. & Anr.

Mr. Amit Ranjan Roy, ... For the appellants

Mr. Parimal Kumar Pahari. ... For the respondents

This appeal is directed against the judgment passed by Motor Accident Claims Tribunal, Burdwan on 20.09.2008 in connection with Motor Accident Claim case No. 115 of 2007, whereby learned Tribunal Dismissed the claim petitioner under Section 163A of the Motor Vehicles Act.

The claim petition was filed on account of death of one Mohar Ali Sekh @ Sk. Mohar Ali in a motor accident occurred on 25.07.2007 at about 7.30 PM, while he was driving a motor cycle towards Kolkata along NH-2 Road, near village Sastipally it struck with a Truck No. WB-23A/5159 and as a result the said Sk. Mohar Ali died on spot. After the accident Burdwan police case No. 384/07 dated 26.07.2007 was started. At the time of accident he was aged about 38 years having profession of a plumber and sanitary mistry. He used to earn Rs.3300/- per month.

The respondent/Insurance Company Limited contested the application by filing written statement

denying all material allegation of the complaint and contending, *inter alia*, that claimants are not entitled to any compensation.

To prove the case, two witnesses were examined namely Sabina Yasmin Bibi (widow of the deceased) as PW-1 and one Tarak nath Dey claiming himself to the employer of the deceased, as PW-2. PW-1 in her examination testified that her husband died in motor accident on 25th July, 2007 by the involvement of a truck bearing No. WB-23A/5159 and at the time of death her husband was 38 years of age and having income of Rs.3300/- per month.

PW-2, in his evidence has stated that Mohar Ali Sekh since deceased was a plumber and sanitary mistry under him for about last 10 years. Deceased used to earn Rs. 140 per day from doing the job. In course of examination PW-2 deposed that he had a licence for contractor business. Mohar Ali Sekh since deceased was appointed by him.

In course of evidence a good number of documents were filed including certified copy of FIR, seizure list, PM report and copy of the insurance policy.

After considering the entire evidence on record, learned Tribunal dismissed the claim petition on the ground that claimants could not proved the accident by adducing any cogent evidence i.e eye witness to the accident.

In course of argument, Mr. Amit Ranjan Roy, learned advocate appearing for the appellants has assailed the judgment passed by the learned Tribunal by submitting the learned Tribunal could not appreciate the correct proposition of law, envisage in Section 163A of the Motor Vehicles Act, and came to his erroneous findings.

Mr. Parimal Kumar Pahari, learned advocate appearing for the respondents/insurance company has supported the judgment passed by the Tribunal.

We are dealing with the case arose out of claim petition under Section 163A wherein proof of rash and negligent driving is not a pre-condition, but claimant has to prove the accident by involvement of a particular vehicle insured with any insurance company. In this case claim petition shows the manner of accident and that was duly corroborated by PW-1, wife of deceased.

That apart, after carefully scrutiny of the cross-examination of PW-1 I do not find any specific denial regarding accident alleged to have been taken place on 27.07.2007 at about 7.30 PM on NH-2 Road, near village Sastipally Burdwan.

Besides, from the copy of the formal FIR, it is found that on receiving the information regarding accident Burdwan P.S. case No. 384/2007 dated 26.07.2007 under Sections 279/338/304A I.P.C. was started, and that was further corroborated by the seizure list dated 26.07.2007 and 29.07.2007. Above all Post-Mortem

report has a reference of the particular police case of Burdwan P.S. following RTA. From the PM report it is also found the name of deceased, who died in motor accident.

The aforesaid evidence which have been discussed is sufficient to presume that Mohar Ali Sekh since deceased met an accident on 25.07.2007 by involvement of one truck bearing Truck No. WB-23A/5159 and after the accident he died on spot. In a case under Section 163A, it is needless to mention that claimants need not prove the rash and negligent driving of the vehicle by adducing any evidence.

In the facts and circumstances, I find that claimants are entitled to compensation on account of death of Mohar Ali Sekh in a motor accident by involvement of one truck bearing Truck No. WB-23A/5159.

With regard to income of the deceased, I find both from the claim petition as well as evidence of witnesses that his profession, at the time of death, was a plumber. From the evidence of PW-2, it is found that he claimed himself as government contractor, but in support of his profession he could not file any documents.

In the aforesaid view of the matter, I find it justified to assess the monthly income of deceased at Rs.3000/- From the point of view I determine the assessment as follows:

1. <i>Monthly Income</i>	<i>Rs.3000/-</i>
2. <i>Yearly income (3000 x12)</i>	<i>Rs.36,000/-</i>
3. <i>Deduction 1/3rd (funeral expenses)</i>	<i>Rs.,,24,000/-</i>
4. <i>Age 38 Multiplier by 16 (24,000 x 16)</i>	<i>Rs.3,84,000/-</i>
5. <i>Add General damages (2000+2500+5000)</i>	<i><u>Rs. 9,500/-</u></i>
<i>Total Rs.</i>	<i>Rs. 3,93,500/-</i>

These claimants are entitled to compensation to the tune of Rs. 3,93,500/- along with interest at the rate of Rs.6% per annum from the date (i.e. 12.09.2007) of filing of the application.

Respondents/insurance company is directed to pay the compensation to the tune of Rs. 3, 93,500/- along with interest at rate of 6% per annum from the date (12.09.2007) of filing of the application till the deposit of that amount before the office of the Registrar General, within six weeks form the date.

Learned Registrar General is requested to disburse all the amount to the claimants in equal share as both the minor son and daughter have attained the age of majority in the meantime.

With the aforesaid observation, judgment passed in Motor Accident Claim Case No. 115 of 2007 dated 20.09.2008 stands dismissed.

FMA 1026 of 2009 stands disposed of. Pending applications, if there be any, stands also disposed of.

Let a copy of this order along with Tribunal records

be transmitted back to the learned Tribunal immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)