

34 02.05.20
Ct 23
273
rup

FMA 666 of 2009
ICICI Lombard General Insurance Co. Ltd
Versus
Smt. Anita Ghosh & Ors.

Mr. Parimal Kumar Pahari,
... For the appellant/Insurance Company

Mr. Sandip Ghosh,
Mr. Partha Sarkar ... For the respondents

This appeal is directed against the judgment passed by learned Judge, 5th Bench, Motor Accident Claims Tribunal, Burdwan on 25th April, 2011 in connection with Motor Accident Claim case No. 40 of 2008 (renumbered as 164 of 2008).

The legal heirs of deceased Madan Mohan Ghosh filed one claim petition under Section 166 of the Motor Vehicle Act, claiming compensation to the tune of Rs.10,00,000/- for death of said Madan Mohan Ghosh in an accident happened on 12.01.2008 at about 16.00 hrs. On the alleged day the victim and one Paramananda Banerjee were returning home from Sardanga by driving one two wheelers and reaching near NH-2, they stopped their vehicle to respond nature's call. At that time one Santro Car bearing no. WB 02X/9648 duly insured with ICICI Lombard General Insurance Co. Ltd., coming with high speed with rash and negligent manner dashed the victim Madan Mohan Ghosh, who succumbed on the spot. At the time of death said victim was a man of 53

years and was an employee of Ajhapur Agricultural Co-operative Society Ltd. Mosagram Branch having income of Rs.7623/- per month.

Appellant/Insurance Company contested the claim petition by filing written objection denying all averments of the claim petition contending, *inter alia*, that the victim should have been cautious before responding to nature's call along the expressway and that is why accident took place due to contributory negligence on the part of the victim.

Learned Tribunal took the application after framing issues and disposed of the application relying on the evidence and documents i.e. FIR, Charge-sheet, Seizure list, Postmortem report, certificate of Insurance policy and assessed compensation of Rs.6, 51,300/-.

Being aggrieved by and dissatisfied with the said judgment Insurance Company preferred this instant appeal on the ground of apportionment of compensation between two vehicles involved in the accident and assessment of monthly income of the victim was not made on any evidence.

From the judgment impugned, it appears that on behalf of the claimants four witness were examined and all the documents were produced in course their evidence and marked as exhibits 1 to 5.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the appellant/Insurance Company

has contended about contributory negligence on the part of the victim. But from the evidence discussed in the impugned judgment, I do not find any such negligence on the part of the victim at the time accident and not only that at the time of accident victim and the pillion rider were stopped to respond the nature's call. There is no specific case on behalf of the Insurance Company that the victim and the pillion rider was ever respond to nature's call on the road itself. Therefore, the accident due to rash and negligent driving of the Santro Car bearing no. WB 02X/9648 duly insured with the Insurance Company cannot be disputed.

So far as avocation and income of the victim is concerned claimants examined two witness i.e. PW-3 and PW-4 together with the pay register of the victim showing salary for the month of December, 2007. From the evidence, it appears that victim was an employee of Ajhapur Agriculture Co-operative Society Ltd. and used to get salary of Rs.6531/- per month.

Accordingly, learned Trial Judge has assessed the compensation after deduction of $\frac{1}{4}$ towards personal expenses as well as after applying multiplier 11, the compensation amount was assessed at Rs.6,51,300/- along with interest at the rate of 7% per annum from the date of filing of the claim petition till the realisation.

On careful perusal of the entire judgment impugned, I do not find any infirmity to interfere with

judgment passed by the learned Judge, 5th Court Motor Accident Claim Tribunal, Burdwan.

In the aforesaid view of the matter, judgement passed by the learned Judge, 5th Bench, Motor Accident Claim Tribunal, Burdwan stands affirmed.

It is reported by Mr. Pahari that entire awarded amount of Rs.6,51,300/- had already been deposited with the office of the Registrar General, High Court, Calcutta on 9th May, 2012. But unfortunately no interest at the rate of 7% per annum awarded by the Tribunal was ever deposited along with awarded amount.

Insurance Company is directed to deposit the interest at the rate of 7% per annum from the date (16.05.2008) of filing of application before the officer of the Registrar General, High Court, Calcutta within six weeks from date.

Learned Registrar General is requested to disburse all amount among the four claimants/respondents in equal share on proper identification and proof.

With the aforesaid observation **FMA 666 of 2009** stands disposed. Pending application, if there be any, also stands disposed of.

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.)