

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 713 of 2009
with
IA No. CAN 2 of 2011 (CAN 1006 of 2011)
(application not in the file)
with
CAN 4 of 2018 (CAN 806 of 2018)
with
CAN 5 of 2018 (CAN 6112 of 2018)

Smt. Preety Mukherjee & Ors.
Vs.
The National Insurance Company Limited & Anr.

Mr. Amit Ranjan Roy
... For the appellant/claimant no.1

Mr. Sandip Ghosh
Mr. Partha Sarkar
... For the appellant/claimant no.3

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

In re: CAN 5 of 2018 (CAN 6112 of 2018)

This application was filed by the appellant/claimant no.1 but the original application is not in the record. Learned advocate on behalf of the appellant/claimant no.1 has submitted a copy which is being treated as original.

Learned advocate appearing on behalf of the appellant/claimant no.1 has referred to this application for correction of surname of the appellant/claimant no.1 from Preety Chakraborty to Preety Mukherjee. In support of such amendment, one Marriage Registration Certificate has been filed along with the application.

Heard both sides.

Perused the Marriage Registration Certificate of appellant/claimant no.1 and the prayer is allowed. Accordingly, Preety Chakraborty be replaced by “**Preety Mukherjee**”.

Department is directed to carry out necessary amendment in the cause title of the Memorandum of Appeal.

The application, being CAN 5 of 2018 (CAN 6112 of 2018), stands disposed of.

In re: FMA 713 of 2009

On prayer, one informal paper book be handed over to Mr. Rajesh Singh, learned advocate, appearing on behalf of the respondent no.1/Insurance Company from the records of the Court.

This appeal is directed against the judgment and award dated on 26th August, 2008 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Bankura, in connection with MAC Case No.3 of 2004/324 of 2003 whereby the learned Tribunal assessed compensation of Rs.4,42,000/- out of total award of Rs.2,65,200/- after deducting 40% on account of liability on the part of the deceased who was driving the motor cycle.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 on account of death of one Arindam Chakraborty by the involvement of one Truck,

bearing registration no.WGA-5912. It is the specific case of the claimants that on 9th July, 2003 at about 7.00 p.m. while the deceased Arindam Chakraborty was returning home from Beliatore side with his motor cycle, bearing registration no.WB-68B/8959, through Bankura-Durgapur Road near Bandhkana jungle under Gadadharidihi Gram Panchayat, one truck, bearing registration no.WGA-5912, coming from the opposite side with high speed and in rash and negligent manner, hit the deceased's motor cycle. As a result, Arindam Chakraborty sustained fatal injury and succumbed ultimately to his injuries. After the accident, Beliatore Police Station Case No.27 of 2003 dated 9th July, 2003 under Sections 279/304A/427 of the Indian Penal Code was started and ended with charge sheet against the driver of the truck, bearing registration no. WGA-5912. That apart, it is stated in the claim petition that at the time of accidental death of the deceased, he was aged about 27 years having income of Rs.20,000/- per month.

Owner of the vehicle did not contest the claim petition but the National Insurance Company Limited, contested the case by filing written statement denying all material averments in the claim petition contending, inter alia, that the driver of the truck had no driving licence at the time of accident and that is why the Insurance Company is not liable to pay any compensation.

To prove the case, claimants examined as many as three witnesses, namely, widow of the deceased as PW-1,

who corroborated the entire averments of the claim petition and she claimed compensation to the tune of Rs.29,38,800/-. PW-2 and PW-3 claimed themselves to be the eyewitnesses to the incident. They saw the accident while the deceased was proceeding towards Barjora by a Bajaj Boxer Motor Cycle and at that time one lorry, bearing registration no.WGA-5912, knocked down the deceased Arindam Chakraborty near Bandakana forest and Arindam Chakraborty died on the spot. Both the eyewitnesses testified that the accident took place due to fault on the driver of the lorry.

In course of evidence, a good number of documents were admitted in evidence and marked as Exhibit 1 to 21, including First Information Report, charge sheet, seizure list, post-mortem report, insurance policy, one xerox copy of income tax return certificate under Section 16A etc.

Learned Tribunal after analysing the evidence on record, deducted 40% towards contributory negligence on the part of the deceased driver with the reasoning that the motor cycle driver was having a learner licence and did not carry any person having knowledge of driving motor cycle as pillion rider. Learned Tribunal assessed the compensation to the tune of Rs.4,42,000/- but actually after deducting 40% from the amount, ultimately awarded compensation to the tune of Rs.2,65,200/-.

In course of argument on the point of deduction, Mr. Amit Ranjan Roy and Mr. Sandip Ghosh, learned

advocates appearing on behalf of the appellant/claimant no.1 and appellant/claimant no.3, respectively, submit that in the existing rule of the Motor Vehicles Act, motor cyclist need not carry any other person in motor cycle as pillion rider having licence for driving motor cycle.

Per contra, Mr. Rajesh Singh, learned advocate appearing on behalf of the respondent no.1/Insurance Company has argued with reference to the evidence on record that at the time of accident, there was no street light. In that circumstance, possibly there was negligence on the part of the motor cyclist also. However, Mr. Singh supported the judgment passed by the learned Tribunal regarding deduction.

On careful perusal of the pleadings, particularly, the written statement filed on behalf of the Insurance Company, I do not find any such plea of learner licence or display of "L" mark on the conspicuous part of the motor cycle.

That apart, there is no rule in the Motor Vehicles Act with regard to the necessity to carry an expert by a motor cyclist having learner licence. There is also no evidence adduced on behalf of the respondent no.1/Insurance Company that at that time "L" mark was not displayed on the motor cycle and even no cross-examination was made at the time of examination of witnesses, i.e., PW-2 and PW-3.

Considering all facts and circumstances, particularly, evidence of eyewitnesses together with the certified copy of FIR and charge sheet, I find no reason to agree with the observation of the learned Tribunal regarding liability of the motor cyclist. Whereas, evidence together with charge sheet clearly show that the accident took place due to rash driving on the part of the driver of the truck.

So far as the income of the deceased is concerned, the learned Tribunal took notional income ignoring xerox copy of the income tax certificate not being substantiated by any cogent evidence regarding the alleged business of the deceased at the relevant point of time.

In view of the aforesaid facts and circumstances, I am agreeable with the learned Tribunal regarding notional income of the deceased but considering the long pendency of this appeal, I am of the humble view that the monthly income of the deceased should be recorded as Rs.3,500/- notionally.

Accordingly, I propose to re-assess the compensation in terms of settled principles of the Hon'ble Apex Court regarding future prospect and general damages as follows:-

Monthly Income	Rs. 3,500/-
Annual Income (Rs.3,500/- x 12)	Rs. 42,000/-
Add: Future prospect (@ 40%)	Rs. 16,800/-

	Rs. 58,800/-

Less: 1/3 rd Deduction (personal expenses)	Rs. 19,600/-

	Rs. 39,200/-
Multiplier by 17 (as per Second Schedule)	x 17
	Rs.6,66,400/-
Add: General Damages	Rs. 70,000/-

Total Compensation	Rs.7,36,400/-
Less – Awarded by ld. Tribunal & received	Rs.2,65,200/-

ENHANCEMENT	Rs.4,71,200/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.7,36,400/-. It is reported that the appellants/claimants have already received Rs.2,65,200/-.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.4,71,200/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 20th September, 2003, till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.4,71,200/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 20th September, 2003, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants are entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the appellants/claimants in equal share on proper identification and proof.

With the above observations, the appeal, being FMA 713 of 2009, is 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.)