

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 229 of 2004

Smt. Raimuni Sahu @ Sah & Ors.
Vs.
Smt. Amita Sahoo

Mr. Sanajit Kumar Ghosh
Mr. Bodhisatta Basu
... For the appellants/claimants

Mr. Rajesh Singh
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgment and order passed on 11th September, 2003 by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Midnapore, in connection with MAC Case No.346 of 2002 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition was filed on account of death of one Sanatan Sahu @ Saha in a motor accident occurred on 12th March, 2002 at about 5.30 a.m., while the deceased was standing at Kalaikunda Gate No.2 and waiting for public bus. At the time one Trekker, bearing registration no.WB-33/6170, coming from Jhargram side with high speed and in rash and negligent manner pressed its sudden break and turned upside down, causing injury to the deceased. He was taken to hospital where he succumbed to his injuries. At the relevant point of time, the victim was an employee of Tata Iron and Steel Company Limited, Jamshedpur, Bihar, having monthly

income of Rs.7,000/-. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.8,00,000/-.

Owner of the offending vehicle did not contest the claim petition but the Oriental Insurance Company Limited contested the case by filing written statement denying all material averments in the claim petition.

To prove the case, appellants/claimants examined two witnesses, namely, Smt. Raimuni Sahu @ Sah, wife of the deceased, as PW-1, who corroborated the entire facts of the claim petition. One Ashwini Ghosh was examined as PW-2 who claimed himself to be an eyewitness of the accident. He testified that on 12th March, 2002 he was also standing at the bus stoppage to avail the bus and one Trekker, bearing registration no.WB-33/6170, coming with high speed, suddenly overturned upon the victim who was sitting there. He along with others rescued the victim and removed to Sadar Hospital where he succumbed to his injuries.

Some documents were filed, including copy of the First Information Report, seizure list, charge sheet, post-mortem report, inquest report etc. but those documents were not admitted in evidence by the learned Tribunal. However, certified copy of FIR, charge sheet, seizure list and post-mortem report, being public documents, I can consider those documents in support of the accident alleged in this case.

Considering the evidence of PW-2 together with the documents, viz., FIR, charge sheet, seizure list and post-mortem report, I find that Sanatan Sahu @ Saha died in motor accident by the involvement of a Trekker, bearing registration no.WB-33/6170, which was driving rashly and the said Trekker was duly insured with the Oriental Insurance Company Limited.

Now, I come to the issue of income of the deceased. According to the claim petition, the deceased was an employee of Tata Iron and Steel Company Limited and some documents of Tata Iron and Steel Company Limited were filed but those documents were not proved. Learned Tribunal took those documents into consideration in support of the employment of the deceased. From the record, I do not find any authorised person of Tata Iron and Steel Company Limited to be examined in this case for proving all those documents of Tata Iron and Steel Company Limited. Therefore, I am unable to come to any decision in this regard.

Learned Tribunal took the contradictory statements of PW-1 and returned its finding that the claimants failed to prove the income of the deceased. However, the learned Tribunal took the notional income of Rs.15,000/- per annum. But, considering the price index and other matters, I am of the humble opinion that notional income of the deceased should be assessed at Rs.3,000/- per month.

Accordingly, I determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect (@ 25%)	Rs. 9,000/-

	Rs. 45,000/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 15,000/-

	Rs. 30,000/-
Multiplier by 14 (as per age of the victim)	<u>x 14</u>
	Rs.4,20,000/-
Add: General Damages	Rs. 70,000/-

Total	Rs.4,90,000/-
Less – Awarded by ld. Tribunal	<u>Rs.1,34,500/-</u>
ENHANCEMENT	Rs.3,55,500/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.4,90,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 20th April, 2002 till the deposit of the amount.

It is reported that the appellants/claimants have already received Rs.1,34,500/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.3,55,500/- along with interest @

6% per annum from the date of filing of the claim petition, i.e., on 20th April, 2002 till the deposit of the amount.

Accordingly, the respondent no.2/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.3,55,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 20th April, 2002 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 to the appellant/claimant no.1, Smt. Raimuni Sahu @ Sah, on proper identification.

With the above observation, the appeal, being FMA 229 of 2004, is disposed of on 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.)