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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 385 of 2015

Rokeya Hossain & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
… For the appellants/claimants

Mr. Parimal Kumar Pahari
… For the respondent no.1/Insurance Co.

This appeal is directed against the order and award dated 4th April, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, IVth Fast Track Court, Barasat, North 24-Parganas, in connection with MAC Case No.39 of 2008 whereby the learned Tribunal awarded compensation to the tune of Rs.3,47,100/-.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of death of one Mosharraf Hossain, aged about 59 years, having income of Rs.23,973/- as a School Teacher, in a motor accident occurred on 5th April, 2008 at about 12.10 hours by the involvement of one Truck, bearing registration no.WB-25A/9104, which was coming with high speed and in reckless manner, dashed the victim Mosharraf Hossain near Katiahat Girls' High School. The accident took place due to rash and negligent driving of the truck which was duly insured with the Oriental

Insurance Company Limited. After the accident, Baduria Police Station Case No.58 of 2008 dated 5th April, 2008 under Sections 279/304A/427 of the Indian Penal Code was started and ended with charge sheet.

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 of the claim petition contending, inter alia, that is no liability to pay compensation to the claimants by the Insurance Company.

To prove the case, the claimants examined as many as three witnesses, namely, widow of the deceased as PW-1, one Md. Akbar Ali, an employee of Sahapur High Madrasa (HS) was examined as PW-2 and one Prasun Kanti Biswas, claiming himself to be an eyewitness, has been examined as PW-3. In course of their evidence certified copy of the First Information Report, charge sheet, insurance policy, registration certificate of vehicle, post-mortem report, daily attendance register of staff and attested copy of Acquittance Roll of Swarupnagar Osia High Madrasah were admitted in evidence.

On behalf of the Insurance Company, one witness, namely, Subhash Chandra Kar, an employee of TRA Department, Barasat, was examined as DW-1.

After analysing the evidence on record together with documents exhibited, learned Tribunal assessed the compensation on the salary of the deceased as School Teacher after deduction of pension received by the widow of the deceased.

Mr. Saidur Rahaman, learned advocate, appearing on behalf of the appellants/claimants, submitted that pension, being a statutory right, cannot be deducted from the salary of the deceased at the time of computing compensation in a motor accident case.

The submission advanced on behalf of the appellants/claimants has not been opposed by Mr. Parimal Kumar Pahari, learned advocate, appearing on behalf of the respondent no.1/Insurance Company.

In fact, due to premature death of the deceased as a School Teacher having salary of Rs.23,973/- and after deduction of tax, it comes to Rs.19,391/-. It has been now settled that pension amount, being a statutory right, cannot be deducted from the income at the time of computation of compensation in a motor accident case. Therefore, I am not agreeable with the learned Tribunal in support of deduction of Rs.14,000/- (pension) from the income of the deceased at the time of death. It is not disputed at the time of death, the deceased was a School Teacher of Swarupnagar Osia High Madrasah and used to get salary of Rs.23,973/- and after deduction of tax, he would get Rs.19,391/-. Besides, learned Tribunal did not consider the future prospect as well as general damages of Rs.70,000/- assessed and held by the Hon’ble Apex Court in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** as well as in the case of **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**.

So far as the accidental death of the deceased is concerned, no argument has been advanced before this Court. But I find from the record, particularly, the evidence of eyewitness (PW-3) together with the certified copy of FIR and charge sheet, there is no reason to disbelieve the accidental death by the rash and negligent driving of the truck, bearing registration no.WB-25A/9104.

In this case, the issue of driving licence taken by the Insurance Company initially on the filing of the claim petition and accordingly evidence was adduced by one employee of RTA Department, Barasat, who has testified before the learned Tribunal that no driving licence, being no.WB-25-058631, was ever issued from the office in the name of Rostam Dhali.

From the evidence, it is also seen that a report was also produced before the learned Tribunal from the RTA Department, Barasat. Therefore, from the liability point of view, albeit the Insurance Company is not liable to pay compensation due to violation of policy in absence of any driving licence. But, it has now been settled by the Hon'ble Apex Court that in case of any violation of the policy, the

Insurance Company shall have to pay the compensation and may recover it from the owner of the vehicle through execution proceeding directly.

Now, I find it necessary to determine the compensation as follows:-

Monthly Income (after deduction of tax)	Rs. 19,391/-
Annual Income (Rs.19,391/- x 12)	Rs. 2,32,692/-
Add: Future prospect (@ 15%)	Rs. 34,903/-
	Rs. 2,67,595/-
Less: 1/3rd Deduction (personal expenses)	Rs. 89,198/-
	Rs. 1,78,397/-
Multiplier by 9 (as per age of the deceased)	x 9
	Rs.16,05,573/-
Add: General Damages	Rs. 70,000/-
Total	Rs.16,75,573/-
Less – Awarded by ld. Tribunal	Rs. 3,47,100/-
ENHANCEMENT	Rs.13,28,473/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.16,75,573/-. It is reported that the appellants/claimants have already received Rs.3,47,100/- from the Insurance Company as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.13,28,473/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 24th April, 2008 till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.13,28,473/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 24th April, 2008 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 respondent no.1/Oriental Insurance Company Limited is at liberty to recover the entire awarded sum from the owner of the vehicle, bearing registration no. WB-25A/9104, 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 appellants/claimants are entitled to withdraw the balance award amount with interest.

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

With the above observations, the appeal, being FMA 385 of 2015, is disposed of.

All pending applications, if there be any, stand disposed of.

A copy of this order be forwarded to the learned Tribunal 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.)