

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 988 of 2016

Anjali Dolai & Anr.
Vs.
Oriental Insurance Company Limited & Anr.

Mr. Krishanu Banik
Mr. Snehasis Jana
... For the appellants/claimants

Mr. Abhik Nandi
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 30th April, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 1st Fast Track Court, Paschim Medinipur, in connection with MAC Case No.135 of 2011 whereby the learned Tribunal awarded compensation to the tune of Rs.1,54,500/-.

This is an appeal for enhancement of compensation on the ground that the learned Tribunal could not assess the monthly income of the minor in terms of the principle laid down by the Hon'ble Apex Court.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed on account of death of one Tuli Dolai, aged about 12 years, in a motor accident happened on 8th December, 2010 at about 5.30 a.m. by

the involvement of one Truck, bearing registration no.OR-02C/4037. At the relevant point of time, the said truck was coming from backside with high speed in rash and negligent manner dashed the said Tuli Dolai and another. As a result, Tuli Dolai and one Shampa Patra sustained severe injury. They were shifted to Dantan Block Primary Health Centre for treatment but both of them died. That is why, claim petition was filed with a prayer for compensation to the tune of Rs.4,00,000/-.

The application was contested by the Oriental Insurance Company Limited by filing written statement denying all material averments in the claim petition contending, inter alia, that the claimants are not entitled to any compensation.

To prove the case, the claimant examined as many as two witnesses, namely, Anjali Dolai, mother of the deceased, as PW-1 and one Parameswar Dolai as PW-2. PW-1 corroborated the entire contents of the claim petition but she has not seen the accident. PW-2 claimed himself to be an eyewitness to the accident. He testified that he saw the accident and lodged FIR before Dantan Police Station. He deposed that the accident took place due to rash and negligent driving of the driver of the offending truck, bearing registration no.OR-02C/4037. In the cross-examination, he has further deposed that at the relevant point of time, the victim came near his house for having their studies and he had seen the accident with his own

eyes. He along with the local people took the victim to the hospital. He denied all the suggestions thrown at him during cross-examination.

Learned Tribunal assessed the compensation on the basis of a decision reported in **(2003) 2 WBLR (Cal) 439** and also assessed the notional income of the child at Rs.15,000/- per annum. Learned Tribunal relied on the case decided by the Hon'ble Division Bench of this Court, in case of an accident happened prior to the year 2003. But, learned Tribunal was dealing with a case of a child of 12 years who met an accident in the year 2010.

However, so far as the accident is concerned, PW-2 specifically stated that the accident took place due to rash and negligent driving of the truck, bearing registration no.OR-02C/4037, and that was further fortified by the FIR as well as charge sheet which was ultimately filed against the driver of the truck under Sections 279/304A of the Indian Penal Code in connection with Dantan Police Station Case No.196 of 2010 dated 8th December, 2010, i.e., in connection with the accident whereby Tuli Dolai died. That apart, no argument has been advanced by the learned advocates appearing on behalf of the parties to this appeal on the issue of accident or rash and negligent driving.

Now, coming to the compensation, I heard both the learned advocates for the parties. Mr. Krishanu Banik, learned advocate, appearing on behalf of the appellants/

claimants has relied on case of **Kishan Gopal & Anr. v. Lala & Ors.** reported in **(2014) 1 SCC 244** as well as a case of **Kurvan Ansari alias Kurvan Ali v. Shyam Kishore Murmu & Anr.** reported in **(2022) 1 SCC 317**.

In the aforesaid decisions, the Hon’ble Apex Court considered the fact that the rupee value has come down drastically from the year 1994 when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/- and considering the support of the child of ten years in future had he been alive was also considered by the Hon’ble Apex Court and assessed notional income accordingly.

In the aforesaid view of the matter, in our case, I do not find any other option but to assess the annual income of the child of 12 years at Rs.25,000/- per annum. That apart, the appellants/claimants are also entitled to future prospect as well as general damages in view of the principle laid down by the Hon’ble Apex Court in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**.

In the aforesaid view of the matter, I need to assess the compensation afresh as follows:-

Annual Income	Rs. 25,000/-
Add: Future prospect (@ 40%)	Rs. 10,000/-

	Rs. 35,000/-
Less: 1/2 nd Deduction (personal expenses)	Rs. 17,500/-

	Rs. 17,500/-
Multiplier by 15 (as per Second Schedule)	x15 Rs.2,62,500/-
Add: General Damages	Rs. 30,000/-
Total Compensation	Rs.2,92,500/-
Less – Awarded by ld. Tribunal & received	Rs.1,54,500/-
ENHANCEMENT	Rs.1,38,000/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.2,92,500/-. It is reported that the appellants/claimants have already received Rs.1,54,500/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.1,38,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.1,38,000/- along with interest @ 6% per annum from the date of filing of the claim petition 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 appellant/claimant no.1 is entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the appellant/

claimant no.1, Anjali Dolai, on proper identification and proof.

With the above observations, the appeal, being FMA 988 of 2016, 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.)