

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 257 of 2015
with
IA No. CAN 2 of 2017 (CAN 1113 of 2017)

Shampa @ Sampa Agarwala & Ors.
Vs.
The Divisional Manager,
United India 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 judgment and award dated on 29th August, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Fast Track Court, Malda, in connection with MAC Case No.108 of 2011 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Tribunal granted compensation to the tune of Rs.5,12,060/-.

The claim petition was filed on account of death of one Chandan Agarwala on 5th February, 2011 while he was travelling by his motor cycle, bearing registration no.WB-66D/6671, one Tata Sumo, bearing registration no.WB-26C/2931, coming from Samsi towards Gazole with excessive speed, dashed against the said motor cycle. As a result, Chandan Agarwala sustained severe injury on his person and he was taken to Gobindapara Hospital

wherefrom he was referred to the District Hospital, Malda where doctor declared him dead. After the accident, Ratua Police Station Case No.22 of 2011 dated 6th February, 2011 under Sections 279/304A of the Indian Penal Code was registered against the driver of the vehicle, bearing registration no.WB-26C/2931 (Tata Sumo). That is why the claim petition was filed with a prayer for compensation to the tune of rs.11,00,000/- with 12% interest from the date of application till realization.

Owner of Tata Sumo did not contest the claim petition but the insurer of the Tata Sumo, United India Insurance Company Limited, contested the case by filing written statement denying all material averments in the claim petition contending, inter alia, that the claimants are not entitled to any compensation as there was no fault on the part of Tata Sumo.

To prove the case, claimants examined as many as three witnesses, namely, widow of the deceased as PW-1, one Sujay Sarma claimed himself to be the eyewitness was examined as PW-2 and one Hemanta Pahan (Inspector of Income Tax at Malda, ITO) proved the Income Tax Return for the assessment year 2010-2011 of the deceased Chandan Agarwala submitted by the deceased himself on 3rd September, 2010.

After considering the entire materials on record, the learned Tribunal did not believe the evidence of PW-2, who claimed himself to be the eyewitness to the accident,

in terms of the First Information Report. Accordingly, the learned Tribunal held that it was a case of contributory negligence and, therefore, after assessing the compensation to the tune of Rs.10,05,120/- but awarded compensation to the extent of 50% in terms of contributory negligence.

No argument has been advanced with regard to the income of the deceased at the time of death in terms of evidence of PW-3 as well as the Income Tax Return for the assessment year 2010-2011. Only argument advanced on behalf of Mr. Saidur Rahaman, learned advocate, appearing on behalf of the appellants/claimants that according to the eyewitness (PW-2), the accident took place when the Tata Sumo dashed the motor cycle of Chandan Agarwala from behind. So, according to Mr. Rahaman, this is not a case of contributory negligence.

Mr. Parimal Kumar Pahari, learned advocate, appearing on behalf of the respondent no.1/Insurance Company has drawn my attention to the First Information Report lodged by one relative of the deceased who stated that the Tata Sumo dashed the motor cycle coming from the opposite direction, i.e., head on collision.

On careful perusal of the FIR, I am unable to agree with Mr. Pahari that it was a head on collision. Actually, according to FIR, the Tata Sumo was coming from the opposite direction but it is not clear whether it dashed in front of motor cycle or any side of the motor cycle as

admittedly from the FIR itself it is found that the FIR-maker was not present on the spot.

In these circumstances, I find no other option but to rely on the evidence of PW-2 who happens to be the eyewitness to the accident. He testified that on 5th February, 2011, due to road traffic accident, Chandan Agarwala died. The said accident took place at 4.15 p.m. and at the time he was going to his shop by cycle. At that time Chandan Agarwala was coming by driving motor cycle from the side of Samsi and was proceeding towards Gazole, a Tata Sumo dashed him from backside coming with high speed while overtaking the bike of Chandan Agarwala. On careful perusal of the cross-examination of PW-2, I do not find any material discrepancy except the denial on the ground of relation by neighbour. That apart, charge sheet has been submitted against the driver of the Tata Sumo, bearing registration no.WB-26C/2931.

In the aforesaid view of the matter, I find no reason to agree with the learned Tribunal on the issue of contributory negligence. The appellants/claimants are entitled to entire compensation as modified below:-

Annual Income	Rs. 1,25,640/-
Add: Future prospect (@ 25%)	Rs. 31,410/-

	Rs. 1,57,050/-
Less: 1/4 th Deduction (personal expenses)	Rs. 39,262/-

	Rs. 1,17,788/-
Multiplier by 14 (as per age of the victim)	<u> x 14 </u>

	Rs.16,49,032/-
Add: General Damages	<u>Rs. 70,000/-</u>
Total Compensation	Rs.17,19,032/-
Less – Awarded by ld. Tribunal	<u>Rs. 5,12,060/-</u>
ENHANCEMENT	<u>Rs.12,06,972/-</u> -----

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.17,19,032/-. It is reported that the appellants/claimants have already received Rs.5,12,060/-.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.12,06,972/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 20th April, 2011, till the deposit of the amount.

Accordingly, the respondent no.1/United India Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.12,06,972/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 20th April, 2011, 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, subject to payment of additional *ad valorem* court fees on the

amount of Rs.6,19,032/- (Rs.17,19,032/- – Rs.11,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount with interest to the appellants/claimants in equal share on proper identification as the minors have already attained majority in the meantime.

With the above observations, the appeal, being FMA 257 of 2015, 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.)