

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 232 of 2002
with
IA No. CAN 1 of 2011 (CAN 6599 of 2011)
(Application not in the file)

Sonamani Kisku
Vs.
Asit Kumar Mitra & Anr.

Ms. Ruxmini Basu Roy, led by
Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
... For the appellant/claimant

Mr. Sanjay Paul
... For the respondent no.2/Insurance Co.

In view of the order passed by this Court on 24th November, 2022, learned advocate appearing on behalf of the respondent no.2/Insurance Company has filed a copy of the insurance policy today showing validity of the policy at the time of accident, which is taken on record.

By the judgment and award passed on 25th January, 2001 by the learned Judge, Motor Accident Claims Tribunal, Uttar Dinajpur, in connection with MAC Case No.288 of 1998 under Section 166 of the Motor Vehicles Act, 1988 has been challenged in this appeal.

The claim petition arose on account of death of one Somai Kisku in a motor accident by the involvement of a Jeep Taxi bearing registration no.WB-59/1666 which was proceeding with high speed and dashed the victim at Kukrakunda (Amtala) on 12th September, 1998 at about

5.00 p.m. while the deceased Somai Kisku was returning from haat. As a result, Somai Kisku succumbed to his injuries. According to the claim petition, the accident took place due to rash and negligent driving of the aforesaid Jeep Taxi. It is alleged that at the time of death, Somai Kisku was a Mason-cum-Agricultural Labourer and aged about 30 years having income of Rs.3,000/- per month. Accordingly, the claim petition was filed with a prayer for compensation to the tune of Rs.3,00,000/-.

The respondent/New India Assurance Company Limited contested the claim petition by filing written statement denying all materials averments made in the claim petition contending, inter alia, that the offending vehicle was not involved in the accident and, therefore, the Insurance Company was not liable to pay any compensation to the claimants.

In course of trial, on behalf of the claimants, two witnesses were examined. The wife of the deceased corroborated the entire factum of accident as well as the age and monthly income of her deceased husband.

PW-2 claiming himself to be an eye-witness of the incident has stated that on 12th September, 1998 at about 5.00 p.m. while the accident took place by the involvement of a vehicle bearing registration no.WB-59/1666, dashed the victim and he was present on the spot. In course of cross-examination, he denied the suggestions made to him on behalf of the Insurance Company.

In course of evidence, certified copy of the First Information Report, original copy of Form-54 [Accident Information Report under Rule 150(a) and (2)], post-mortem report and cover note issued by the Insurance Company.

Learned Tribunal on further considering the evidence on record passed the judgment dismissing the claim case contested against the respondent/Insurance Company and allowed ex parte against the owner of the vehicle and the owner was directed to pay the compensation to the tune of Rs.179,500/-.

Learned advocate appearing on behalf of the appellant/claimant has referred to Exhibit-4 and Exhibit-2 and submits that at the relevant point of time the offending vehicle was duly insured with the New India Assurance Company Limited. It is submitted that all details, i.e., engine number, chassis number, name of the owner and the nature of the vehicle are all inscribed in the cover note in respect of newly purchased offending vehicle. Learned advocate on behalf of the appellant/claimant also refers to the Form-54 (Exhibit-2) which supports all details of offending vehicle. It is further submitted on behalf of the appellant/claimant that the learned Tribunal assessed Rs.15,000/- per annum ignoring that even the minimum wages.

No argument has been advanced on behalf of the respondent no.2/Insurance Company regarding policy

which was valid at the time of alleged accident. Both the learned advocates appearing on behalf of the parties to this appeal have submitted that the accident took place in the year 1998, therefore, the notional income of the deceased should be taken as Rs.2,800/- per month.

In terms of submissions of both the learned advocates for the parties as well as the settled principles laid down by the Hon’ble Apex Court, I find it necessary to modify the award as follows:-

Monthly Income	Rs. 2,800/-
Annual Income (Rs.2,800/- x 12)	Rs. 33,600/-
Add: Future prospect (@ 40%)	Rs. 13,440/-

	Rs. 47,040/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 15,680/-

	Rs. 31,360/-
Multiplier by 16 (Rs.31,360/- x 16)	x 16
	Rs.5,01,760/-
Add: General Damages	Rs. 70,000/-

Total	Rs.5,71,760/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.5,71,760/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 27th October, 1998, till the deposit of the amount and liability to pay compensation is upon the respondent no.2/Insurance Company as the policy was valid at the time of alleged accident.

Accordingly, the respondent no.2/New India Assurance Company Limited is directed to deposit the entire amount of Rs.5,71,760/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 27th October, 1998 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 is entitled to withdraw the entire amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.2,71,760/- (Rs.5,71,760/- – Rs.3,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 232 of 2002, 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.)