

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

IA No. CAN 2 of 2023
in
FMA 1115 of 2008

Smt. Kumkum Mondal & Ors.
Vs.
Oriental Insurance Company Limited & Anr.

Mr. Amit Ranjan Roy
... For the appellants/claimants

Ms. Gopa Das Mukherjee
... For the respondent no.1/Insurance Co.

In re: IA No. CAN 2 of 2023

This application has been moved with a prayer for recording attainment of majority of the appellant/claimant nos.2 and 3.

It is submitted by the learned advocate appearing on behalf of the appellants/claimants that the claimant no.2 Keya Mondal got married with Sushil Kumar Show few months ago and her surname has been changed by adding her husband's surname. Now, the appellant/claimant no.2 is known as Keya Mondal Show. It is further submitted on behalf of the appellants/claimants that the spelling of the name of the appellant/claimant no.3 should be corrected as Riya Mondal in terms of Admit Card issued by the West Bengal Board of Secondary Education which has been filed along with this application.

Perused the Aadhaar Card and Admit Cards of appellant/claimant nos.2 and 3 and considering the year of filing of the claim petition, the prayer is allowed.

Department is directed to make necessary notes and corrections in the cause title of the Memorandum of Appeal.

The application, being CAN 2 of 2023 stands disposed of.

In re: FMA 1115 of 2008

This appeal is directed against the judgment and award dated 23rd April, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Paschim Medinipur, in connection with MAC Case No.278 of 2006 under Section 166 of the Motor vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.5,85,000/- in favour of the claimants.

On 9th April, 2006 at about 4.20 p.m. when Pradip Mondal was returning along with other passengers from Monoharpur to Ghatal by a trekker and passengers were getting down at the left side of morrum portion of pitch road at Ranirbazar. At that time, one Bus, bearing registration no.WB-29/1479, coming to Ghatal from Kutighat with high speed and dashed the back side of the trekker. As a result, Pradip Mondal along with other passengers sustained grievous injuries in their person. They were taken to Ghatal Hospital where Pradip Mondal

succumbed to his injuries. At the time of accident, Pradip Mondal was a man of 29 years having transport business with monthly earning of Rs.7,150/-. That is why the claimants, i.e., legal heirs of the deceased, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 with a prayer for compensation to the tune of Rs.10,00,000/-.

The Insurance Company contested the claim petition by filing written objection denying all material allegations of the claim petition contending, inter alia, that the claimants are not entitled to any compensation, as prayed for.

To prove the case, claimants examined two witnesses, i.e., wife of the deceased Kumkum Mondal as PW-1 and Shanti Shaw as PW-2. Wife of the deceased (PW-1) has testified and corroborated the entire contents of the claim petition including the income of her husband from seasonal transport business. During cross-examination, suggestions were thrown to her denying the income of her husband.

Shanti Shaw PW-2 testified before the Tribunal and claimed himself to be an eyewitness to the accident. He stated all facts of the accident and involvement of the bus, bearing registration no.WB-29/1479, due to rash and negligent driving. In his cross-examination, he further testified that Pradip Mondal was selling potato and rice etc. for his livelihood.

In course of their evidence, formal First Information Report, seizure list, charge sheet, post-mortem report and insurance policy were admitted in evidence and marked as Exhibit 1 to 5.

After careful perusal of the entire materials on record, the learned Tribunal awarded compensation on the monthly income of Rs.4,000/-.

Mr. Amit Ranjan Roy, learned advocate, appearing on behalf of the appellants/claimants has submitted before this Court that the learned Tribunal could not consider the compensation on the head of future prospect as well as general damages of Rs.70,000/- in terms of principle laid down in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700.**

On the other hand, Ms. Gopa Das Mukherjee, learned advocate on behalf of the respondent no.1/ Insurance Company has submitted that in absence of any particular evidence in support of the business, learned Tribunal ought to have considered the notional income of Rs.3,000/- per month.

After having a look on the judgment passed by the learned Tribunal, it comes to my view that on behalf of the respondent no.1/Insurance Company, the monthly income of Rs.4,000/- was proposed in terms of number of family members of the deceased and livelihood.

So far as the accidental death is concerned, there is sufficient evidence on record regarding involvement of the bus, bearing registration no.WB-29/1479, and accident took place due to rash and negligent driving of the bus. The manner of accident and involvement of the bus were duly corroborated by FIR, charge sheet and seizure list (Exhibits-1, 2 and 3) and that was further supported by the evidence of PW-2.

Considering all facts and circumstances as discussed above as well as the principle laid down by the Hon'ble Apex Court in **Pranay Sethi** (supra), I find it necessary to reassess the compensation as follows:-

Monthly Income	Rs. 4,000/-
Annual Income (Rs.4,000/- x 12)	Rs. 48,000/-
Add: Future prospect 40%	Rs. 19,200/-

	Rs. 67,200/-
Less: 1/4 th Deduction (personal expenses)	Rs. 16,800/-

	Rs. 50,400/-
Multiplier by 17 (as per age of the victim)	X 17

	Rs.8,56,800/-
Add: General Damages	Rs. 70,000/-

Total Compensation	Rs.9,26,800/-
Less: Awarded by ld. Tribunal & received	Rs.5,85,000/-

ENHANCEMENT	Rs.3,41,800/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.9,26,800/-. It is reported

that the appellants/claimants have already received Rs.5,85,000/- along with interest as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.3,41,800/- 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.3,41,800/- 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 appellants/claimants are entitled to withdraw the balance award amount with interest.

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

With the above observations, the appeal, being FMA 1115 of 2008, 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.)