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FMA 97 of 2002
IA No. CAN 1 of 2008 (Old No. CAN 5442 of 2008)
CAN 2 of 2015 (Old No. CAN 2486 of 2015)
(Applications not here)

Smt. Bhagabati Malik & Ors.
Versus
The New India Assurance Co. Ltd.

Mr. Krishnu Banik, ... For the appellants

Mr. Parimal Kumar Pahari. ... For the respondent

The appeal is directed against the judgment passed by Motor Accident Claims Tribunal, Burdwan on 13.08.2001 in connection with Motor Accident Claim case No. 189 of 1998, whereby learned Tribunal awarded 1, 92,000/- as compensation for death of one Susanta Malik in a motor accident on 19.06.1998.

The legal heirs of the deceased Susanta Malik filed the claim application under Section 163A of the Motor Vehicle Act before the learned Tribunal with a prayer for compensation to the tune of Rs. 4,20,000/-. It was alleged that on 19.06.1998 at about 7.00 A.M. Sk. Susanta Malik was going to Rashulpur to sell hens, at that time one Lorry bearing No. WB 153878 proceeding with high speed, dashed the said Susanta Malik, who sustained severe injury and taken to hospital where he has succumb to his injuries. At the time of accidental death Susants Malik was aged about 35 years having an income of Rs. 3000/- per month from his business.

The respondent/New India Assurance Company Limited contested the application by filing written statement denying all averments of the claim petition contending, *inter alia*, that claimants are not entitled to any compensation whatsoever.

To prove the case, widow of the deceased, Bhagabati Malik was examined as PW-1 in this case. During evidence she deposed every contention of the claim petition, including the profession and income of her husband at the time of accidental death. In course of her evidence FIR, PM report, Insurance Policy were admitted in evidence as exhibits 1 to 3. After analyzing evidence on record, learned Tribunal assessed the monthly income at Rs. 1500/- and assessed entire compensation after applying multiplier, to the tune of Rs. 1,92,000/-.

In course of argument Mr. Krishnu Banik, learned advocate appearing for the appellants has submited that there is oral evidence on record to prove the income of the deceased, at the time of death, from his business of selling hens. In support of his contention he relied upon a case of ***National Insurance Company Ltd. Vs. Sujata Manna and Ors.*** reported in ***2017 (3) T.A.C. 710 (Cal)*** as well as the case of ***Smt. Bilasini Mondal vs. National Insurance Company Limited and Another*** reported in ***2003 (2) T.A.C. 435 (Cal)***, wherein Hon'ble Division Bench of this court reiterated that oral evidence, if otherwise trustworthy, can be taken into consideration by the Tribunal to assess the monthly income of the deceased.

In opposition Mr. Parimal Kumar Pahari, learned advocate appearing for the respondent/Insurance Company submits that after amendment of the Motor Vehicles Act in the year 1994, the income per annum was fixed as Rs.15000/- per annum, and it is further submitted that monthly income may be considered as Rs 2000/- per month in view of the members of the family of the deceased.

From the evidence of PW-1, together with documentary evidence adduced in this case, I find that Susanta Malik died in a motor accident by the involvement of one lorry bearing No. WB-15/3872 due to its rash driving on 19.06.1998 at about 7.00 AM. On this issue no argument has been advanced by the parties to this appeal.

So far as the income of the deceased is concerned I find that at the time of accidental death Susanta Malik was aged about 35 years, and he used to earn to Rs.3000/- per month from his business of selling hens, and these averments of the claim petition has been duly corroborated by the evidence of PW-1, widow of deceased, and at the time of accidental death of Susanta Malik his family was consisted of his wife, his two sons and one daughter.

Considering all facts and circumstances, I find it justify to assess the monthly income at Rs.2500/- per month and I determine the compensation as follows:

1. *Monthly Income be assessed as Rs.*	*= Rs.2,500/-*
2. Annual Income be assessed as (Rs.2500/- x 12)	*= Rs. 30,000/-*
3.1/3rd deduction (Rs.30,000- Rs.10,000/-)	*= Rs.20,000/-*
4. Multiplier as per age of 16 (Rs.20,000//X6)	*= Rs.3,20,000/-*
5. General damages	*=Rs. 9,500/-*
	Rs. 3,29,500/-
6. Less awarded amount	*Rs. 1,92,000/-*
	Rs. 1,27,500/-

Therefore, the claimants are entitled to compensation of Rs.3,29,500 along with interest.

It is reported that claimants are already received Rs.. 1, 92,000/- from the learned Tribunal and now claimants are entitled to balance amount of Rs. 1,27,500/- along with interest at the rate of Rs.6% per annum from the date (i.e. 26.06.1998) of filing of the claim application till the deposit of that amount before the office of the Registrar General.

Claimants are also entitled to get interest at the rate of Rs.6% per annum on the amount of Rs. 1, 92,000/- from the date of (i.e. 19.10.2001) filing of the application till the date of receipt of the amount.

Respondent/ The New India Assurance Co. Ltd is directed to pay the balance amount of Rs. 1,27,500 along with interest at the rate of Rs.6% per annum from the date (i.e. 26.06.1998) of filing of the claim petition till the date of deposit before the office of the Registrar General.

The respondent/insurance company is also directed to pay interest at the rate of Rs.6% per annum on the amount of Rs. 1,92,000/ from the date 26.06.1998 till 19.10.2001.

The respondent/insurance company is directed to pay that amount within 6(six) weeks from the date.

Learned Registrar General is requested to disburse all the amount deposited by the Insurance Company to the claimants in equal share as all three (03) minor have attained the age of majority by elapse of time.

With the aforesaid observation, the **FMA 97 of 2002** stands disposed of.

Pending applications, if there be any, stands also disposed of.

Let a copy of this order along with Tribunal records shall be transmitted back to the learned Tribunal immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)