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25.01.2023
Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1447 of 2009
with
CAN 2 of 2022
with
CAN 3 of 2022

National Insurance Company Limited
Vs.
Baisali Samadder & Ors.

with

COT 69 of 2022

Baisali Samadder & Ors.
Vs.
National Insurance Company Limited & Anr.

Mr. Rajesh Singh
... For the appellant/Insurance Co. in FMA 1447 of 2009 & respondent no.1/ Insurance Co. in COT 69 of 2022

Mr. Dilip Kumar Chatterjee
Mr. Krishanu Banik
... For the respondents/claimants/applicants in FMA 1447 of 2009 & Cross Appellants in COT 69 of 2022

In re: COT 69 of 2022

The cross-appeal, being COT 69 of 2022, has been filed by the claimants but the original appeal is not in the record. Learned advocate on behalf of the claimants has submitted an office copy of COT 69 of 2022, which is being treated as original and taken up for hearing treating the same as on day's list along with FMA 1447 of 2009 for disposal.

In re: CAN 2 of 2022

This application was filed by the respondents/ claimants but the original application is not in the record. Learned advocate on behalf of the respondents/claimants has submitted a copy which is being treated as original.

This application has been moved with a prayer for recording attainment of majority of minor son of the deceased, Titash Samadder, being the respondent/ claimant no.2.

Heard both sides.

Perused the Aadhaar Card of respondent/claimant no.2, Titash Samadder, and the prayer is allowed.

Department is directed to make necessary note in the cause title of the Memorandum of Appeal.

The application, being CAN 2 of 2022, stands disposed of.

In re: CAN 3 of 2022

This application was filed by the respondents/ claimants but the original application is not in the record. Learned advocate on behalf of the respondents/claimants has submitted a copy which is being treated as original.

This is an application with a prayer for recording the death of the respondent/claimant no.3, Charubala Samadder, mother of the deceased, supported by one death certificate dated 28th August, 2014.

Heard both sides and perused the death certificate.

Accordingly, the prayer for recording the death of respondent/claimant no.3, Charubala Samadder, is allowed.

The Department is directed to expunge the name of the respondent/claimant no.3, Charubala Samadder, from the cause title of the Memorandum of Appeal.

The application, being CAN 3 of 2022, stands disposed of.

In re: FMA 1447 of 2009

The judgment and order dated 28th November, 2008 in connection with MAC Case No.315 of 2004 under Section 166 of the Motor Vehicles Act, 1988 passed by the learned Judge, Motor Accident Claims Tribunal, 10th Additional District Judge, Alipore, South 24-Parganas, has been challenged in this appeal.

The claim petition was filed on account of death of one Tapan Samadder in a motor accident occurred on 5th May, 2004 at about 13.40 hours by the involvement of a Bus, bearing registration no.WB-19/1850. At that time, the deceased Tapan Samadder was proceeding with his scooter with a pillion rider, when the aforesaid bus running with high speed and in rash and negligent manner dashed the said scooter. As a result, Tapan Samadder fell on the road and sustained severe injury. He was shifted to Behala Vidyasagar Hospital where he succumbed to his injuries. At the time of death, the victim was aged about 35 years six months having income of Rs.8,491/- from his tailoring business. Legal representatives of the deceased filed the claim petition for compensation to the tune of Rs.10,86,848/-.

Owner of the offending vehicle, bearing registration no.WB-19/1850, did not contest the claim petition but the insurer of the offending bus, National Insurance Company Limited, contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that the claimants are not entitled to any compensation from the Insurance Company.

To prove the case, the claimants examined as many as two witnesses, namely, Smt. Baisali Samadder, the wife of the deceased, as PW-1 and Tapan Das, claimed himself to be an eyewitness to the accident, was examined as PW-2. PW-1 corroborated the entire contents of the claim petition, including amount of compensation. In course of her evidence, 17 number of documents were filed and admitted in evidence as Exhibit 1 to 17, including attested copy of First Information Report, seizure list, post-mortem report, death certificate, registration certificate, insurance certificate, driving licence, voters identity card, PAN card and income tax return for the year 2004-2005 etc.

In course of argument, Mr. Rajesh Singh, learned advocate, appearing on behalf of the appellant/Insurance

Company assailed the income tax return for the year 2004-2005 relied on behalf of the respondents/claimants in course of trial. Mr. Singh has submitted that the claim petition was filed on 29th July, 2004 and the income tax return was submitted by the wife of the deceased on 14th July, 2004, after the death of Tapan Samadder. Mr. Singh has further submitted that no other income tax return has been filed by the respondents/claimants showing submission of return by the deceased himself for any previous year. Thereby Mr. Singh has submitted that the scope of manipulation cannot be ruled out. He has also submitted that the learned Tribunal ought to have considered the notional income of Rs.3,000/- per month for computing dependency compensation.

Mr. Krishanu Banik, learned advocate, on behalf of the respondents/claimants/cross-appellants has submitted that Income Tax Return for the assessment year 2004-2005 showing income for the period from 1st April, 2003 to 31st March, 2004. In support of his contention, he relied on the trade licence issued by Kolkata Municipal Corporation against the name of Tapan Samadder.

To eschew the prolixity, I need not go to the discussion on the issue of accidental death of Tapan Samadder by the involvement of bus, bearing registration no.WB-19/1850. More so, from the evidence of PW-2 together with the FIR, seizure list and charge sheet, I find that the accident took place due to rash driving of the bus, bearing registration no.WB-19/1850, and charge sheet was submitted, after the accident, against the driver of the said bus.

The only issue in this appeal is in respect of the income of the deceased at the time of death. From the income tax return for the assessment year 2004-2005, I find that it was filed by the wife of the deceased on 14th July, 2004 just 15 days prior to the filing of the claim petition on 29th July, 2004.

In that view of the matter, I am unable to accept the said income tax return to compute the dependency compensation in terms of the claim petition filed by the legal representatives of the deceased as no other income tax return for the previous assessment year was ever filed before the learned Tribunal. But considering the trade licence of tailoring business of the deceased, I assess the income of Rs.50,000/- per annum instead of notional income of Rs.36,000/- per annum.

One cross-appeal, being COT 69 of 2022, was filed by the claimants, though not admitted. The claimants/ cross-appellants made a prayer for future prospect and general damages of Rs.70,000/-.

Considering all facts and circumstances discussed above, I determine the compensation in terms of the settled principle laid down by the Hon'ble Apex Court, as follows:-

Annual Income	Rs. 50,000/-
Add: Future prospect (@ 40%)	Rs. 20,000/-
	Rs. 70,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 23,333/-
	Rs. 46,667/-
Multiplier by 15 (as per age of the victim)	x 15
	Rs.7,00,005/-
Add: General Damages	Rs. 70,000/-
	Rs.7,70,005/-
Less – Rs.50,000/- already paid u/s 140	Rs. 50,000/-
	Rs.7,20,005/-
Less: Already withdrawn by the claimants	Rs.3,50,000/-
Balance compensation	Rs.3,70,005/-

For the reasons, it is seen that the respondents/claimants/cross-appellants are entitled to the total compensation to the tune of Rs.7,70,005/- out of which respondents/claimants already received Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988. Therefore, the respondents/claimants/cross-appellants are entitled to the total compensation to the tune of Rs.7,20,005/-.

It is reported that the entire awarded amount of Rs.9,10,000/- as directed by the learned Tribunal has been deposited by the appellant/National Insurance Company Limited before the office of the learned Registrar General by two separate deposits and the respondents/claimants have already withdrawn

Rs.3,50,000/- from the office of the learned Registrar General.

Therefore, the respondent/claimant nos.1 and 2, i.e., widow and son of the deceased, are entitled to the balance amount of Rs.3,70,005/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 29th July, 2004 till the date of withdrawal from the office of the learned Registrar General.

That apart, the respondent/claimant nos.1 and 2 are also entitled to the interest @ 6% per annum on Rs.3,50,000/- from the date of filing of the claim petition, i.e. on 29th July, 2004 till the date of withdrawal, i.e., 6th January, 2011, of the said amount.

The learned Registrar General is requested to disburse the amount to the respondent/claimant nos.1 and 2, i.e., Baisali Samadder and Titash Samadder, in equal share on proper identification.

Learned Registrar General is also requested to refund the excess amount, if any, to the appellant/National Insurance Company Limited after the disbursement of the amount to the respondent/claimant nos.1 and 2.

With the above observations, the appeal, being FMA 1447 of 2009, is disposed of.

COT 69 of 2022, being not admitted, stands dismissed.

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.)