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

FMA 1188 of 2014
with
IA No. CAN 1 of 2014 (CAN 553 of 2014)
with
CAN 2 of 2014 (CAN 554 of 2014)
with
CAN 3 of 2017 (CAN 5067 of 2017)
with
CAN 4 of 2018 (CAN 5584 of 2018)

HDFC ERGO General Insurance Company Limited
Vs.
Sukhada Das & Ors.

with

COT 56 of 2014

Sukhada Das & Ors.

Vs.

HDFC ERGO General Insurance Company Limited & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Company in FMA 1188 of 2014 & respondent no.1 in COT 56 of 2014

Mr. Krishanu Banik
... For the respondents/claimants in FMA 1188 of 2014 & cross-appellants/ claimants in COT 56 of 2014

The cross-appeal, being COT 56 of 2014, has been filed by the claimants but the original appeal is not in the record. Learned advocate on behalf of the appellants/claimants has submitted an office copy of COT 56 of 2014, which is being treated as original and taken up for hearing treating the same as on day's list along with FMA 1188 of 2014 for disposal.

This appeal is directed against the judgment and award dated 20th September, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Fast Track Court, Tamluk, Purba Medinipur, in connection with MAC Case No.30 of 2013/143 of 2010 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition was filed on account of death of one Sudharsan Chandra Das @ Sudharsan Das in a road traffic accident occurred on 9th April, 2010 at about 5.00 p.m. at village Kumarpur in between Dokangora and oil pump of Jharu Das on NH-41 by the involvement of one Trailer, bearing registration no.NL-01G/0738, running with high speed, knocked down Sudharsan Chandra Das @ Sudharsan Das. He was taken to S.D. Hospital, Haldia where he succumbed to his injuries. After the accident, Bhabanipur Police Station Case No.61 of 2010 dated 10th April, 2010 under Sections 279/304/427 of the Indian Penal Code was started and ended with charge sheet against the driver of the vehicle.

In support of the case, claimants examined two witnesses, namely, the widow of the deceased as PW-1 who corroborated the entire averments of the claim petition and one Pintu Mondal as PW-2 who testified as eyewitness to the incident. He deposed that on 9th April, 2004 at about 5.00 p.m. he was standing on the left side of the kutcha road of NH-41 at Kumarpur, he saw the deceased coming from Haldia side through the left side of the road with his by-cycle when the offending vehicle coming with high speed from Mechada side knocked down the deceased.

In course of their evidence, certified copy of First Information Report, charge sheet, seizure list, post-mortem report, dead body challan, insurance certificate and identity card were admitted in evidence as Exhibit 1 to 8.

Learned Tribunal after taking all the evidence into consideration assessed the compensation of Rs.5,72,960/- taking annual income of Rs.43,200/- and after 1/5th deduction and also multiplier 16. That apart, the learned Tribunal also awarded Rs.20,000/- towards funeral expenses and mental sufferings.

In course of the argument, Mr. Rajesh Singh, learned advocate appearing on behalf of the appellant/ Insurance Company has submitted that the accident took place in the year 2010 so notional income of Rs.3,000/- per month should be taken into account instead of Rs.3,600/- per month and the respondents/claimants are also entitled to future prospect of 25% in terms of age of the deceased and after 1/4th deduction and applying multiplier 14, the principal amount should be Rs.5,42,500/- along with general damages of Rs.70,000/-.

Mr. Krishanu Banik, learned advocate appearing on behalf of the respondents/claimants did not oppose the prayer on behalf of the appellant/Insurance Company.

In the aforesaid facts and circumstances, I like to determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect (@ 25%)	Rs. 9,000/-
	Rs. 45,000/-
Less: 1/4th Deduction	Rs. 11,250/-
	Rs. 33,750/-
Multiplier by 14 (as per age of the victim)	X 14
	Rs.4,72,500/-
Add: General Damages	Rs. 70,000/-
Total Compensation	Rs.5,42,500/-

For the reasons, it is seen that the respondents/claimants are entitled to the total compensation to the tune of Rs.5,42,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 13th May, 2010 till the deposit of the amount.

It is reported that the appellant/Insurance Company has already deposited Rs.25,000/- on 31st January, 2014 and Rs.6,95,909/- on 10th March, 2014 along with all interest before the office of the learned Registrar General of this Court.

In the aforesaid facts and circumstances, learned Registrar General is requested to disburse the compensation amount of Rs.5,42,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 13th May, 2010 till the date of this order in the manner as prescribed in the order of the learned Tribunal on proper identification. In case of attainment of majority of the minors, learned Registrar General is requested to disburse the entire amount among the claimants in equal share on proper identification.

Learned Registrar General is also requested to refund the excess amount, if any, to the appellant/HDFC ERGO General Insurance Company Limited after the disbursement of the amount to the respondents/ claimants.

In course of argument, Mr. Rajesh Singh, learned advocate, appearing on behalf of the appellant/Insurance Company has submitted that at the time of accident, the offending vehicle (Trailer), bearing registration no.NL-01G/0738, had no route permit and that defence was taken in the written statement before the learned Tribunal. Mr. Singh in his usual fairness also submitted that such plea of no route permit has not been substantiated by any cogent evidence on behalf of the Insurance Company in course of trial. Mr. Singh has further referred to the seizure list wherefrom it is seen that route permit was not seized in respect of the offending vehicle.

Considering the aforesaid facts and circumstances, the appellant/HDFC ERGO General Insurance Company Limited is at liberty to recover the entire amount from the owner of the vehicle, bearing registration no.NL-01G/0738, subject to proof of the fact that the offending vehicle had no route permit at the time of accident in an independent proceeding.

With the above observations, the appeal, being FMA 1188 of 2014, and the cross appeal, being COT 56 of 2014, are 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.)