

25.07. 2023
item No.20
n.b.
ct. no. 551

FMA 3391 of 2015

with

**IA No. CAN 1 of 2025(Old No. CAN 4328 of 2015)
(not here)**

Megha Biswas(Minor) & Ors.

Vs.

United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjon Roy,

..... for the appellants.

Mr. P. K. Pahari

.....for the respondents.

The instant appeal has been preferred against the judgment dated February 4, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, District Judge, Nadia in MAC case no.162 of 2012.

The claimants have preferred the instant claim application before the learned Tribunal under Section 166 of the M.V. Act with a ground that there was predecessor was died due to a in road traffic accident.

The brief fact of the case is that on March 5, 2012 at about 12.35 noon, deceased Milon Biswas was proceeding by his motorcycle from Tehatta to Jalangi P.S. to join the duty. At the time, the offending vehicle bearing registration No. WB-25B/0597 tried to overtake the motorcycle of the deceased in a rash and negligent manner and dashed him from behind, as a result of which, the deceased sustained severe bodily injuries and the driver of the offending vehicle fled away, ultimately the

deceased succumbed to his injuries. It is the case of the claimants that the deceased was a State Government employee engaged in the police department as ASI aged about 35 years and used to earn Rs.19,800/- per month as salary at the time of his death. They prayed for just and proper compensation.

Learned tribunal heard the matter and also perused the evidence on record adduced by both parties. It is pertinent to mention herein the owner of the offending vehicle did not contest the claim case but the Insurance Company contested it by filing written statement. Learned Tribunal in deciding the case has framed some issue and after considering the materials on record has dismissed the claim case on the ground that the claimants have not produced the documents pertaining to the motor cycles which was driven by the deceased at the time of accident. Learned Tribunal is of the view that the claimants have suppressed the material fact by concealing driving licence, policy paper and other documents of the motor cycles. They do not appear before the learned Tribunal with clean hands; on that score learned Tribunal has dismissed the claim application.

Learned advocate for the appellant submitted before this Court that the impugned judgment passed by the learned Tribunal is erroneous. Learned Tribunal has committed mistake in assessing the compensation of this case. He pointed out that the documents required to

prove for rash and negligent driving of the offending vehicle was produced including the police papers. The investigation of the police ended in charge sheet against the driver of the offending vehicle. The eye witness of the accident was appeared before the learned Tribunal as P.W.

2. He also submitted that the deceased was a Government servant. So, the claim case need be disposed of by the learned Tribunal on deciding all the issues. He further pointed out that the learned Tribunal has misguided himself in deciding the issue. The offending vehicle of the instant case is the Pick up Van being registration no. WB-25B/0597, the driver of the offending vehicle was arrested in connection with Karimkpur P. S. Case No. 35 of 2012 dated 6.3.2012. The motorcycle driving by the deceased being not the offending vehicle, is not required by the learned Tribunal to verify its documents. However, he submitted before this Court that the impugned judgment passed by the learned Tribunal need be set aside and the claimants be awarded just and proper compensation.

Learned advocate appearing on behalf of the Insurance Company raised strong objection and submitted before this Court in the impugned judgment passed by the learned Tribunal suffers no illegality. He also submitted before this Court that the learned Tribunal has considered the materials on record and after perusing the evidence of PW. 1 and 2 including evidence adduced

on behalf of the Insurance Company passed the justified order. He also pointed out that the two vehicles were involved in the alleged accident. Consequently, the learned Tribunal has passed the order that the claimants were not appeared before the learned Tribunal with clear hands. He also submitted before this Court that the learned Tribunal in deciding the issue no.2 is of the view that the issue decided against the claimants/appellants. The issue no.2 was specifically framed before the Tribunal. The issue was raised regarding the involvement of the motorcycle, which was answered in negative. So, the learned Tribunal has correctly dismissed the claim application.

Heard the learned advocates and perused the materials on record, it appears to me in deciding the instant claim case, learned Tribunal has framed as many as 6 issues; the issued no.2 was framed as follows:

“2. Whether the deceased was the owner of the motorcycle bearing registration No. WB-52E/8454 or the deceased was driving the said motorcycle under valid driving licence as claimed by the petitioners.”

In deciding the said issue, the learned Tribunal found no materials regarding the valid licence of the deceased to drive the motorcycle. It appears from the LCR the driving licence of the motorcycle was produced and it was marked. It appears to me that the learned Tribunal

has not perused the document at the time of passing the impugned judgment.

The driving licence is standing in the name of Rajendra Prasad Das. It is true that the driving licence of the deceased was not produced.

This is the case filed under Section 166 of the M.V. Act. The claimant has the duty to prove the rash and negligent driving of the offending vehicle at the time of accident. The rash and negligent driving of the offending vehicle i.e. Pick Up Van bearing registration no. WB 25B/0597 was well proved by submission of charge sheet in prima facie. The driving licence and other particulars of the motorcycle driven by the deceased is not required to be proved in this case. There are no counter pleading or evidence to justify the framing of issue no.2 by the Tribunal.

Considering the same, it appears to me that the issue no.2 decided by the learned Tribunal is in wrong perspective of law. This judgment only on the basis of the issue no.2 is appears to be not justified and is liable to be set aside.

In considering the entire facts and circumstances of the case, it appears to me that the PW 1 of this case is the wife of the deceased who deposed before the learned Tribunal along with co-related documents, pay slip etc. of her husband. The alleged accident was proved by the PW 2 who adduced as eyewitness of the accident and his

evidence has not shaken in the cross-examination. I find no infirmity to believe the statement of PW 2. The OPW 1 appearing on behalf of the Insurance Company who proved the policy of the Insurance Company from which it appears that the offending vehicle was well covered within the policy of the Insurance Company at the time of accident. The facts and circumstances of the case shows that the claimants had sufficiently proved rash and negligent driving of the driver of this offending vehicle, who is responsible for the accident. Thus, in my view of the claimants are entitled to get the compensation as prayed for.

In calculating just and proper compensation of this case, it appears to me that the deceased was an Assistant Sub-Inspector of the police under the Superintendent of Police, Murshidabad. The pay slip of the deceased for the month of February 2012 was marked as 'Exhibit- 8'. It appears from the 'Exhibit 8' that the gross salary of the deceased was Rs.20,916/- per month. The tax component is Rs.130. So, the tax component is required to be deducted from the salary. After deducting the tax component, monthly income comes to Rs.20,7,86/-. From the I-Card issued by the West Bengal Police Department that the date of birth of the deceased was 01.11.1976. So, considering the same, the deceased was within the age group of 30 to 35.

In considering the judgment of the Hon'ble Supreme Court passed in **Sarala Verma** applicable multiplier of this case would be 16. The deceased was in permanent job and was below age group of 40 years. So according to the judgment of Hon'ble Supreme Court passes in **Pranay Shetty**, the claimants are also entitled to the future prospects to the tune of 50% of the actual salary of the deceased. The claimants are the mother, wife, children of the deceased. They are entitled to the general damages of Rs.70,000/-. So, considering the entire aspect the compensation of Tribunal is hereby modified are recasted hereunder:

1. Annual Income be assessed as Rs. 20,786 X 12=	2,49,432/-
2. Less 1/3 deduction on account of personal Expenses.	= - 83,144/- 1,66,288/-
4. Multiplied 16	= 1,66,788 X 16 26,60,608/-
5. Add 50% future prospect	+13,30,304/- 39,90,912/-
5. Add General Damages (70,000)	+ 70,000/-
Total Compensation	Rs. 40,60,912/-

The total award comes to Rs.40,60,912/-. The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application i.e. from 14.5.2012.

The Insurance Company is further directed to pay the compensation within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court Calcutta. On such deposit, the appellants are at liberty to receive the same subject to

ascertainment of payment of requisite court fees. The present appellants are legal heirs of the deceased. Thus, the office of the Learned Registrar General, High Court Calcutta is directed to disburse the same in the name of the appellants through four equal Account Payee Cheque. The appellant nos.1 and 2 are appears to be minor, so, their cheques are to be received by the appellant no.3 being the natural guardian and mother. The appellant no.3 is directed to deposit the cheque in the nationalized bank by a Fixed Deposit Scheme. So, that the amount may be utilized by the appellant nos. 1 and 2 after attaining their majority. Accordingly, FMA 3391 of 2015 is disposed of.

All connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)