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

FMA 1034 of 2012

Smt. Shyamali De & Ors.
Vs.
The Branch Manager,
Bajaj Allianz General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
... For the appellants/claimants

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order dated 22nd December, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Cooch Behar, in connection with MAC Case No.138 of 2006 whereby the learned Judge awarded compensation to the tune of Rs.3,00,000/- along with interest @ 6% per annum to be paid by the owner of the vehicle involved in the accident.

The claim petition arose out of an application filed by the claimants, i.e., legal heirs of the deceased, under Section 166 of the Motor vehicles Act, 1988 on account of death of one Probir De on 28th May, 2006 at about 8.00 a.m. while the deceased Probir De was going to his work with his brother Dilip De by Auto Mini Door Car, bearing registration no.WB-73-X/0757, which met with an accident at Kholta before a cold storage of Cooch Behar-

Alipurduar Road. As a result, Probir De sustained severe injury on his person and he was taken to MJN Hospital, Cooch Behar, wherefrom he was referred to the North Bengal Medical College and Hospital and ultimately he succumbed to his injuries on 29th May, 2006. At the time of death, he was aged about 35 years having income of Rs.3,000/- per month. After the accident, Kotwali Police Station Case No.180 of 2006 dated 29th May, 2006 under Sections 279/304A of the Indian Penal Code was started. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.3,00,000/-.

Owner of the offending vehicle did not contest the claim petition but Bajaj Allianz General Insurance Company Limited contested the case by filing written statement denying all material allegations made in the claim petition contending, inter alia, that the deceased was a gratuitous passenger and the Insurance Company is not liable to pay any compensation to the claimants.

To prove the case, the claimants examined as many as three witnesses, namely, Smt. Shyamali De, widow of the deceased, as PW-1 who corroborated the entire averments of the claim petition. One Bhanu Biswas was examined as PW-2, who corroborated the accident happened by the involvement of the vehicle, bearing registration no.WB-73-X/0757, being a goods carrier. He testified in his evidence that on the alleged date of accident, the vehicle was proceeding with six passengers, including the driver. One Dilip De, who happens to be the brother of the deceased, examined as PW-3. He testified that on the alleged date of accident, he along with his deceased brother was travelling by the offending vehicle along with their green vegetables and at the time the vehicle was driving rashly and with excessive speed and that is why the vehicle capsized and the deceased Probir De sustained severe injury on his person and ultimately succumbed to his injuries.

On behalf of the respondent no.1/Insurance Company, one Senior Legal Executive, namely, Khushbu Agarwal, was examined as OPW-1. She testified on behalf of the Insurance Company and deposed that the offending vehicle was a goods carriage vehicle and she proved the insurance coverage of the vehicle for the driver and Khalashi. That is why, according to her, the Insurance Company is not liable to pay any compensation.

This appeal has been preferred only on the ground of liability of payment of compensation. From the judgment passed by the learned Tribunal, I find that the learned Judge of the Tribunal rightly returned his finding that the deceased was a gratuitous passenger in terms of claim petition as well as evidence adduced on behalf of the claimants. Learned Tribunal also assessed the compensation to the tune of Rs.3,00,000/- along with interest @ 6% per annum but the owner of the offending vehicle was directed to make payment.

It is trite law that the liability may be fixed with the Insurance to pay the compensation to the claimants and the Insurance Company shall have the liberty to recover the claim amount from the owner of the offending vehicle.

In the aforesaid circumstances, I find no reason to disallow the prayer of the appeal. I direct the respondent no.1/Bajaj Allianz General Insurance Company Limited to pay the awarded compensation passed by the learned Tribunal.

Accordingly, the respondent no.1/Bajaj Allianz General Insurance Company Limited is directed to deposit the compensation amount of Rs.3,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 15th November, 2006 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 respondent no.1/Bajaj Allianz General Insurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the vehicle, bearing registration no.WB-73-X/0757, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental**

Insurance Co. Ltd. v. Nanjappan & Ors. AIR 2004 SC 1630 : (2004) 13 SCC 244.

It is found on record that the minor claimants have already attained majority by efflux of time.

The appellants/claimants are entitled to withdraw the compensation amount with interest.

The learned Registrar General is requested to disburse the amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 1034 of 2012, is 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.)