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

FMA 8 of 2014
with
CAN 2 of 2016 (CAN 9753 of 2016)

ICICI Lombard General Insurance Co. Ltd.
Vs.
Madhumita Mudi & Ors.

with

COT 33 of 2015

Smt. Madhumita Mudi & Anr.
Vs.
ICICI Lombard General Insurance Co. Ltd. & Anr.

Mr. Sayak Majumder
... For the appellant/Insurance Co. in FMA 8 of 2014 & respondent no.1/ Insurance Co. in COT 33 of 2015

Mr. Jayanta Kumar Mandal
... For the respondents/claimants in FMA 8 of 2014 & Cross Appellants/ Claimants in COT 33 of 2015

This appeal is directed against the judgment and award dated 6th June, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan, in connection with MAC Case No.22 of 2011/102 of 2011 whereby the learned Judge granted compensation to the tune of Rs.6,49,230/-.

The claim petition was filed on account of death of one Gagan Chandra Mudi in a motor accident happened on 29th May, 2010 at about 1.00 p.m. at G.T. Road (NH-II) in front of Jothram Library, while one Truck, bearing registration no.WB-41/0048, with very high speed and negligent manner, dashed the deceased from back side. As a result, he sustained severe injuries on his person and shifted to Burdwan Medical College and Hospital where he was declared dead. At the time of accident, Gagan Chandra Mudi was an Inspector attached to West Bengal Food and Supply Department having salary of Rs.23,915/- and aged about 56 years.

Owner did not contest the claim petition but the ICICI Lombard General Insurance Company Limited contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that it was a case where First Information Report was lodged after one month of the accident and thereby delay in lodging FIR created a doubt about the involvement of the vehicle. Accordingly, it was prayed for dismissal of the claim petition.

To prove the case, the claimants examined as many as three witnesses, namely, Madhumita Mudi, the wife of the deceased, as PW-1, one Rabindranath Pal as PW-2 and one Abhisekh Chowdhury as PW-3.

PW-1 corroborated the entire contents of the claim petition. According to her, immediately after accident he came to know about the number of vehicle and went to lodge FIR in the police but refused and thereafter she lodged complaint before the Superintendent of Police but no result was yielded. That is why one application under

Section 156(3) of Code of Criminal Procedure was filed before the Court and ultimately investigation was started treating the said application under Section 156(3) of the Code of Criminal Procedure as FIR. She also stated that one Rabindranath Pal (PW-2) informed her about the number of the vehicle.

PW-2 claimed himself to be an eyewitness to the accident. He stated that on the alleged date and time of the accident, he was present on the spot and saw a truck, bearing registration no.WB-41/0048, which caused the accident due to rash and negligent driving. He further stated that Gagan Chandra Mudi sustained severe injury due to accident and he was declared dead in the hospital. From the tone and tenor of the cross-examination, I find that PW-2 who knew Madhumita Mudi for the first time on 29th May, 2010 when accident took place and he was the person to inform the number of the vehicle to Madhumita Mudi.

PW-3, one Lower Division Assistant, namely, Abhisekh Chowdhury, came before the learned Tribunal and proved salary certificate of Gagan Chandra Mudi. He specifically stated that Gagan Chandra Mudi was posted in the Department of Food and Supply in Accounts Section. He proved the salary certificate for the months of April and May, 2010, i.e., just prior to the accident.

On behalf of the Insurance Company, one Sankarsan Sanyal, Legal Manager of ICICI Lombard

General Insurance Company Limited, was examined as OPW-1, who asserted the policy number issued in favour of Sk. Lal Mohammad (owner of the vehicle) by covering the risk of the vehicle no. WB-41/0048. In cross-examination, he has stated that the Insurance Company did not file any case against the vehicle.

OPW-2, driver of the vehicle, Sk. Jahangir has admitted the accident and it also appears from his evidence that he left the place after accident. He specifically stated that he was the driver of the vehicle no. WB-41/0048.

OPW-3, owner of the vehicle, Sk. Lal Mahammad also corroborated the evidence of OWP-2. He testified that on 29th May, 2010 his vehicle met an accident and driver was Sk. Jahangir (OPW-2). He stated that police seized the vehicle under a seizure list.

In course of evidence, First Information Report, charge sheet, seizure list, insurance policy, post-mortem report, salary certificate were all admitted in evidence and marked as exhibits.

Mr. Sayak Majumder, learned advocate, on behalf of the appellant/Insurance Company has drawn my attention to the evidence of PW-1 and PW-2 and tried to make this Court understand that the vehicle no.WB-41/0048 was planted in this case and nowhere from the evidence it is seen that any person took note of the number of the vehicle after the accident on the G.T. Road.

Mr. Majumder has also referred to the evidence of PW-1 and PW-2 and submitted that there is no evidence on record that PW-2 ever informed the vehicle number to the wife of the deceased. Thereby Mr. Majumder has submitted that the claimants could not prove any accident by the involvement of the vehicle no.WB-41/0048. Mr. Majumder has further submitted that PW-2 was not named as charge-sheeted witness which was submitted after one year of the accident. Mr. Majumder has also submitted that inordinate delay in filing FIR has created a doubt regarding collusion between the owner and the claimants.

Mr. Jayanta Kumar Mandal, learned advocate, on behalf of the claimants/cross-appellants has referred to the evidence of OPW-2 and OPW-3 who admitted the accident. It is submitted by Mr. Mandal that both the driver and the owner of the vehicle have corroborated the accident alleged in this case and accidental death of Gagan Chandra Mudi. Therefore, according to Mr. Mandal, in absence of any cogent evidence with regard to collusion, case of the claimants/cross-appellants cannot be thrown out of Court.

However, I find merit in the submission of Mr. Mandal with regard to evidence of OPW-2 and OPW-3, i.e., both the driver and owner of the offending vehicle came to Court and admitted the accident happened on 29th May, 2010 on the G.T. Road under Burdwan Police Station.

It is not disputed that at the relevant point of time the vehicle was duly insured with the ICICI Lombard General Insurance Company Limited and it is also not disputed that after filing of FIR, case was investigated and charge sheet was submitted against the driver of the vehicle. Therefore, by no stretch of imagination, I can hold that vehicle no. WB-41/0048 was planted collusively. In the aforesaid view of the matter, the claimants/cross-appellants are entitled to compensation.

On behalf of the claimants, one cross-appeal, being COT 33 of 2015, has been filed. Mr. Mandal has submitted on behalf of the claimants/cross-appellants that the learned Tribunal erred in taking multiplier 11 instead of 9 in terms of age of the deceased. He has further submitted that the claimants/cross-appellants are also entitled to 15% of the income towards future prospect as well as general damages of Rs.77,000/- pursuant to the principle laid down in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**.

Considering all the facts and circumstances discussed above, I find it necessary to modify the award as follows:-

Monthly Income (Rs.23915/- – Rs.130/-)	Rs. 23,785/-
Annual Income (Rs.23,785/- x 12)	Rs. 2,85,420/-
Add: Future prospect (@ 15%)	Rs. 42,813/-
	Rs. 3,28,233/-

Less: 1/3rd Deduction (personal expenses)	Rs. 1,09,411/-
	Rs. 2,18,822/-
Multiplier by 9 (as per Second Schedule)	X 9
	Rs.19,69,398/-
Add: General Damages	Rs. 77,000/-
Total Compensation	Rs.20,46,398/-

For the reasons, it is seen that the claimants/cross-appellants are entitled to the total compensation to the tune of Rs.20,46,398/-.

It appears from the record that on behalf of the appellant/Insurance Company, the entire amount awarded by the learned Tribunal to the tune of Rs.6,49,300/- was already deposited before the office of the learned Registrar General of this Court.

Accordingly, the appellant/ ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced amount of Rs.13,97,098/- (Rs.20,46,398/- – Rs.6,49,300/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 5th May, 2011 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 claimants/cross-appellants are entitled to withdraw the entire awarded amount with interest and accrued interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.8,46,398/-

(Rs.20,46,398/- – Rs.12,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the entire amount along with interest and accrued interest to the claimants/cross-appellants in the manner and proportion as mentioned in the judgment passed by the learned Tribunal, on proper identification and proof.

With the above observations, the appeal, being FMA 8 of 2014 stands dismissed and the Cross-Appeal, being COT 33 of 2015, stands allowed.

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.)