

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1236 of 2013
with
IA No. CAN 1 of 2013 (CAN 5292 of 2013)
(Application not in the file)

Smt. Chaina Roy & Ors.
Vs.
The Oriental Insurance Company Limited & Anr.

Mr. Amit Ranjan Roy
... For the appellants/claimants

Mr. Sanjay Paul
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 11th January, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, District Judge, Nadia, in connection with MAC Case No.50 of 2010 whereby the learned Tribunal awarded compensation to the tune of Rs.3,21,500/-.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed on account of death of one Sudhir Roy in a road traffic accident happened on 23rd January, 2010 at about 10.30 a.m., while Sudhir Roy was returning home from Gangnapur Market. At the relevant point of time, one Bus, bearing registration no.WB-51/9114, coming with high speed from the side of Majhergram, dashed the victim Sudhir Roy. As a result, Sudhir Roy sustained severe injury. He was taken to Ranaghat Sub-Divisional Hospital wherefrom he was

referred to SSKM Hospital, Kolkata. Ultimately, he succumbed to his injuries on the same day. It is alleged that the accident took place due to rash and negligent driving of the offending bus and at the time of death, the victim Sudhir Roy was aged about 48 years having monthly income of Rs.6,000/- per month to run his family consisting of five members. Accordingly, the claimants, i.e., legal heirs of the deceased Sudhir Roy filed the claim petition with the prayer for compensation to the tune of Rs.6,24,000/-.

Owner did not contest the claim petition but the Oriental Insurance Company Limited with whom the bus was insured contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that the claimants were not entitled to any compensation, as prayed for.

To prove the case, the claimants examined as many as three witnesses, namely, Chaina Roy, the wife of the deceased, as PW-1, one Suresh Ch. Roy as PW-2 and one Ashhish Hira as PW-3. PW-1 has corroborated the entire facts alluded in the claim petition. She denied the suggestion thrown at her by the Insurance Company.

PW-2 testified that he saw the accident occurred on 23rd January, 2010 at about 10.30 a.m. while he along with his elder brother, i.e., Sudhir Roy, since deceased, together were returning home from Gangnapur Bazar. At that time the offending bus, bearing registration no.WB-

51/9114, coming with high speed dashed Sudhir Roy. As a result, Sudhir Roy sustained severe injury. He was taken to SSKM Hospital, Kolkata where he succumbed to his injuries on the same day. From his cross-examination, I do not find any substantive statement to contradict the evidence adduced in examination-in-chief.

PW-3 tried to establish the income of the deceased. He testified that monthly income of Sudhir Roy was Rs.6,000/- as he paid tax to Panchayat.

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

Learned Tribunal after evaluating the evidence assessed monthly notional income of the deceased at Rs.3,000/- as no document has ever been produced before the Court in support of his business.

In course of argument, Mr. Amit Ranjan Roy, learned advocate, appearing on behalf of the appellants/claimants has submitted that the claimants have succeeded to prove the accidental death of Sudhir Roy by the involvement of the bus, bearing registration no.WB-51/9114.

I have gone through the evidence of PW-2 together with the charge sheet admitted in evidence. PW-2 has specifically stated that at the time of accident, he was returning with the deceased Sudhir Roy, his elder brother.

From the charge sheet (Ext.-6), it is found that after the accident, Gangnapur Police Station Case No.20 of 2010 dated 23rd January, 2010 under Sections 279/304 of the Indian Penal Code was started and after investigation, charge sheet was filed against the Subhendu Naskar, the driver of the bus bearing registration no.WB-51/9114. Therefore, I do not find any reason to disbelieve the accidental death of Sudhir Roy by the involvement of the bus, bearing registration no.WB-51/9114, which was insured with the Oriental Insurance Company Limited.

With regard to the income of the deceased, I have gone through the entire evidence of PW-1 and PW-3 wherefrom I find that the deceased used to earn Rs.6,000/- per month from his rice/paddy business and he also used to pay tax to the Panchayat. That apart, he had ten cottahs of land, but in course of evidence, no single scrap of paper was ever produced showing either business of rice/paddy or payment of tax to Panchayat. In these circumstances, I find that the learned Tribunal rightly assessed the income at Rs.3,000/- per month notionally.

Both the learned advocates appearing on behalf of the parties to this appeal could not disagree with the principle laid down by the Hon'ble Apex Court in case of **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700.**

Accordingly, the principle laid down by the Hon’ble Apex Court in **Pranay Sethi** (supra), the appellants/claimants are entitled to 25% of the income of the deceased as future prospect in terms of age of the deceased, deduction for personal expenses should be 1/4th instead of 1/3rd in terms of family members of the deceased and appellants/claimants are also entitled to general damages of Rs.70,000/- along with 10% increment every three years.

In view of the principle set forth above, I propose to determine 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: 1/4 th Deduction (personal expenses)	Rs. 11,250/-

	Rs. 33,750/-
Multiplier by 13 (as per Second Schedule)	X 13

	Rs.4,38,750/-
Add: General Damages	Rs. 77,000/-

Total Compensation	Rs.5,15,750/-
Less: Awarded by ld. Tribunal & received	Rs.3,21,500/-

ENHANCEMENT	Rs.1,94,250/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.5,15,750/-. It is reported that the appellants/claimants have already received

Rs.3,21,500/- as awarded by the learned Tribunal but no interest was granted under Section 171 of the Motor Vehicles Act, 1988.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.1,94,250/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 20th February, 2010 till the deposit of the amount. The appellants/claimants are also entitled to interest @ 6% per annum on the amount of Rs.3,21,500/- from the date of filing of the claim petition, i.e., on 20th February, 2010 till 25th February, 2013.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.1,94,250/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 20th February, 2010 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/Insurance Company is also directed to deposit interest @ 6% per annum on the amount of Rs.3,21,500/-, which was deposited by the Insurance Company and already withdrawn by the claimants, from the date of filing of the claim petition, i.e., on 20th February, 2010 till 25th February, 2013, before the office of the learned Registrar General of this Court, within six weeks from date.

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

The learned Registrar General is requested to disburse the entire amount along with interest to the appellants/claimants in equal share on proper identification and proof, subject to attainment of majority of the appellant/claimant no.4, Papia Roy, in the mean time.

With the above observations, the appeal, being FMA 1236 of 2013, stands 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.)