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Sl. No. 18 & 19
Ct. No. 654

FMA 552 of 2022
With
COT 63 of 2022

Smt Chabi Halder & Ors.

-Versus-

The National Insurance Co. Ltd.& Ors.

Mr. Jayanta Banerjee
Ms. Ruxmini Basu Roy
...for the appellants-claimants

Mr. Sanjay Paul
.....for the Respondent-Insurance Company

This appeal is preferred against the judgment and award dated 23 April 2021 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 1st Court, Nadia in M.A.C Case no. 211 of 2012 granting compensation of Rs. 2,91,760/-in favour of the claimants.

The brief fact of the case is that on 16 February 2012 at about 00:30 hours in the night the bus bearing registration no. WB-51/9917 which was taking the relatives of the bridegroom from Maheshnagar Ghat to Fulbari and driven at a high speed overturned near R.L.I at Uttar Nadir Dhar Para, Maheshnagar on the road under Chapra Police Station. As a result of which the victim and other relatives of the bridegroom sustained severe injuries on their person. The victim was admitted to Nadia District Hospital where he

succumbed to his injuries and died. On account of sudden demise of the deceased-victim claimants being the widow, children and parents of the deceased filed application for compensation under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to prove their case examined two witnesses including widow of the deceased (claimant no.3) and also proved number of documents which has been marked as **Exhibits 1 to 5** respectively.

The respondent no.1-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants the learned tribunal granted compensation of Rs 2,91,760/-in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

The respondent no.1-insurance company challenging the award of the learned tribunal has also filed a cross objection being COT 63 of 2022.

Mr. Jayanta Banerjee, learned advocate for appellants-claimants submits that there has been arithmetical error in computation of the compensation amount inasmuch as the learned Tribunal multiplied the amount towards personal and living expenses of the

deceased with the multiplier in order to calculate the total loss of dependency whereas it ought to have multiplied the differential amount of notional income and amount towards personal living expenses with the multiplier for calculating the total loss of dependency and accordingly he submits for modification of such computation which is noticeably an arithmetical error on the face of it. In the light of his aforesaid submissions, he prayed for modification of the impugned award.

Mr. Sanjay Pal, learned advocate for respondent no. 1-Insurance company submits that Insurance Company has precisely filed the cross-objection challenging the award on the ground that though the claimants filed application under Section 163A of the Motor Vehicles Act, 1988 but the learned Tribunal proceeded on wrong presumption as if the application had been filed under Section 166 of the Motor Vehicles Act, and accordingly error crept into such computation which is not sustainable in the eye of law. He further submits that since the application has been filed by the claimants under Section 163A of the Motor Vehicles Act hence the learned Tribunal was not prescribed to investigate the fact of negligence of any party in the said accident which is beyond the scope of the said provisions and should have adhered to Second Schedule to Section 163A of the Act for assessment of

compensation amount. In view of his above submissions he prays for modification of the award in accordance with law treating the application filed by the claimants as an application under Section 163A of the Act.

In reply, Mr. Banerjee, learned advocate for appellants-claimants submits that though the claimants have quoted Section 163A of the Motor Vehicles Act in the claim application but they have made out a specific case of rash and negligent driving of the driver of the offending vehicle. Further taking into account the pleadings of the parties before it the learned tribunal framed relevant issues pertaining to such aspect of rash and negligent driving of the offending vehicle and during hearing evidence has been led by the claimants in support of such facts pleaded. Thus from the materials on record it could be found that the learned Tribunal has proceeded treating the application of the claimants to be under Section 166 of the Motor Vehicles Act. He further submitted that even if the proceeding is described to be one under Section 163A of the Motor Vehicles Act mere caption of an application cannot decide the real nature of the same and in support of his contention he relied on the decision of this Court passed in **Smt. Upasi Singha & Ors. Versus The Oriental Insurance Co. Ltd. & Ors.** reported in **(2010)4 WBLR (CAL)552**.

Before delving into the issue raised by the appellants-claimants in the appeal with regard to arithmetical error made by the learned Tribunal in computation of the compensation amount, it is pertinent to decide as to whether the application of the claimants referred to as an application under Section 163A of the Act is to be treated as an application under Section 166 of the Act or not. At the outset, it is found that the claimants in column no. 23 of the claim application has indicated it to be an application under Section 163A of the Act and that they have not filed any other application under Section 140 and/or 166 of the Motor Vehicles Act before any Tribunal. Be that as it may, it is relevant to note that the claimants in column no. 23 of the claim application averred that the accident occurred due to rash and negligent act of the driver of the offending vehicle. The Insurance Company entered appearance and filed written statement.

Upon considering the pleadings and other materials on record, the learned Tribunal framed 8 issues of which issue Nos. 4 and 5 are relevant in the context of the present discussion which is reproduced hereunder:

“4. Did the victim die due to injuries received by him as a result of rash and negligent driving by the driver of the offending vehicle?”

5. Was the driver of the offending vehicle bearing No. WB-51/9917 (Omni bus) riving the vehicle in rash and negligent manner as to endangering public safety and human life?"

After framing of such issues, evidence has been led by the claimants in the form of both oral and documentary in support of fact of negligence of the driver of the offending vehicle in the said accident. Further the learned tribunal on the basis of such evidence led by the claimants has also decided the above issues holding that the accident occurred due to rash and negligent driving of the driver of the bus. Therefore, from the commencement of the trial on framing of issues it is pertinent to note that the learned Tribunal proceeded assuming the application to be one under Section 166 of the Motor Vehicles Act. There is no iota of material placed showing that upon framing of the issues no. 4 and 5, which is relevant for the purpose, any objections were raised from the side of the Insurance Company. Thus the Insurance Company has taken part in the proceedings with the knowledge that such issues have been framed in the proceedings. This Hon'ble Court in **Smt. Upasi Singha & Ors. (supra)** observed as hereunder:

"6. After going through the materials on record, we, however, find that although the proceeding was described as one under Section 163A of the Act, the learned Tribunal

specifically framed issue as to whether the drivers of the two vehicles involved were negligent and the parties led evidence and even argument was advanced at the time of trial on such issue. It further appears that the learned counsel appearing on behalf of the Insurance Companies even admitted the negligence on the part of the drivers of the offending vehicles.

7. It is now settled law that mere caption of an application cannot decide the real nature of the same and if it appears that the Court dealing with such application has jurisdiction to grant appropriate relief under a different provision of statute, such wrong caption cannot be a ground for rejection of the proceeding.”

Bearing in mind the observations of this Court as above and also the materials relating to proceedings before the Tribunal it is very much clear that the learned Tribunal from the very initiation of trial considered the said application to be under Section 166 of the Motor Vehicles Act and proceeded in accordance thereof. I find substance in the submission of Mr. Banerjee, learned advocate for appellants-claimants, that mere describing an application under Section 163A of the Act cannot be a ground to reject grant of appropriate relief in the facts and circumstances of the case when the Court dealing with such application has jurisdiction to grant appropriate relief. Thus the challenge thrown to the award of the learned Tribunal

by respondent no.1-insurance company in the aforesaid context does not hold good.

Now I revert back to arithmetical error indicated by Mr. Banerjee, learned advocate for the appellants-claimants with regard to computation of compensation amount. Upon perusal of the impugned Judgment and award it is found that the learned tribunal while assessing total loss of dependency has multiplied the amount of personal and living expenses of the deceased with the multiplier, which is an arithmetical error on the face of record. The multiplier should have been multiplied with the differential amount of notional income and the amount towards personal and living expenses of the deceased.

The other findings of the learned Tribunal has not been challenged namely income assessed, the amount towards future prospect, the multiplier, the amount of deduction towards personal and living expenses of the deceased and general damages.

Keeping in mind the aforesaid calculation is made hereunder:

Calculation of compensation

Monthly income.....	Rs.3,300/-
Annual Income (Rs.3,300/- X 12).....	Rs. 39,600/-
Add: Future Prospects @ 40%	
of total Income.....	<u>Rs.15,840/-</u>
Annual loss of Income.....	Rs.55,440/-
Less: Deduction 1/4 th of the Annual Income	

towards personal and living expenses.. Rs.13,860/-

Rs.41,580/-

Adopting multiplier 16

(Rs.41,580/- X 16)..... Rs.6,65,280/-

Add:General Damages.....Rs.70,000/-

Loss of estate....Rs.15,000/-

Loss of consortium..Rs.40,000/-

Funeral Expenses.....Rs.15,000/-

Total Compensation.....**Rs.7,35,280/-**

Thus the total compensation amount comes to Rs. 7,35,280/-. It is informed that the claimants have already received an amount of Rs. 2,91,760/- as awarded by the learned Tribunal but no interest was granted. Accordingly the claimants are entitled to the balance amount of Rs. 4,43,520/- along with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

It is relevant to note that learned Tribunal has allowed interest on the awarded sum. Since appellants-claimants submits that they have not received interest component on the awarded sum, hence the claimants are also entitled to interest on the awarded sum of Rs. 2,91,760/- along with interest at the rate of 6% per annum from the date of filing of the claim application till the deposit of awarded sum was made before the learned Tribunal, if not already received.

The respondent no. 1-insurance Company is directed to deposit the balance amount of Rs. 4,43,520/-along with interest at the rate of 6% per

annum from the date of filing of the claim application till deposit and further shall deposit the interest on the amount awarded by the learned Tribunal as indicated above (if not already paid), by way of cheque before learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad valorem* Court fees on the enhanced amount of compensation, if not already paid.

The learned Registrar General upon deposit of the aforesaid amount shall release the said amount in favour of appellants-claimants in equal proportion, after making payment of Rs. 40,000/- towards spousal consortium to appellant no.1, widow of the deceased, on satisfaction of their identity as well as payment of *advalorem* court fees, if not already paid.

With the aforesaid observation, the appeal as well as the cross objection stands disposed of. The impugned Judgment and award of the learned Tribunal stands modified to the aforesaid extent. There shall be no order as to costs.

All connected applications, if any, stand disposed of. Interim order, if any, stands vacated.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)