

28.07.2023
Ct. 654
D/L 63
ab

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICITION
APPELLATE SIDE**

FMA 132 of 2023

Laila Bewa & Ors.

-Vs-

M/s. Oriental Insurance Co. Ltd. & Anr.

Ms. Sima Ghosh

... for the appellants-claimants

Mr. Parimal Kumar Pahari

... for the respondent no.1-insurance company

This appeal is preferred against the judgment and award dated 30th July, 2016 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 4th Court, Berhampur, Murshidabad in MAC Case No. 71 of 2013 granting compensation of Rs. 1,59,500/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 23rd December, 2012 while the victim and others were travelling by the offending vehicle bearing registration No. WB-73A/2407 (Luxury Bus) from Kolkata to Berhampore at that time the driver of the offending vehicle lost control and hit a road side tree and capsized. As a result of the said accident, the victim sustained severe injuries and was shifted to NRS

Medical College & Hospital, Kolkata where the victim succumbed to his injuries and died on 25th December, 2012. On account of sudden demise of the victim, the claimants being the widow, son, two minor sons, one minor daughter and the mother of the deceased filed application for compensation of Rs. 4,00,000/- under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1 to 6** respectively.

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

By order dated 8th February, 2023, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with since he did not contest the claim application.

After passing of the award, the appellant no. 6, Fatema Bewa expired on 10th September, 2016 and by the aforesaid order passed in CAN 2 of 2022, her name has been expunged from the memorandum of appeal.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 1,59,500/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

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

Ms. Sima Ghosh, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the deceased at Rs. 15,000/- per annum whereas it ought to have determined the income at Rs. 3,000/- per month since at the time of accident, the victim was a labour under a mason by profession. In the light of the aforesaid submissions, she prays for enhancement of the compensation amount.

Mr. Parimal Kumar Pahari, learned advocate for the respondent no. 1- insurance company opposes such prayer for enhancement of the compensation amount.

The only issue raised in the present appeal is whether the learned Tribunal erred in determining the income of the deceased.

With regard to the aforesaid issue, it is found that the learned Tribunal has determined the income at Rs. 15,000/- per annum. However, considering that the victim was a labour under a mason, monthly income is determined at Rs. 3,000/- per month.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs. 3,000/-
Annual income (Rs. 3,000/- x 12)	Rs. 36,000/-
Less: 1/3 rd towards personal and living expenses	Rs. 12,000/-
	Rs. 24,000/-
Multiplier 15 (Rs. 24,000/- x 15)	Rs. 3,60,000/-
Add: General Damages Loss of estate: Rs. 2,500/- Loss of consortium: Rs.5,000/- Funeral expenses: Rs.2,000/-	Rs. 9,500/-
Total compensation	Rs. 3,69,500/-

Thus, the appellant nos. 1 to 5 (claimants) are entitled to compensation of Rs. 3,69,500/- together with interest @ 6% per annum from the date of filing of the claim application (19.12.2013) till payment.

It is informed that the claimants have already received the awarded sum of Rs. 1,59,500/- together with interest in terms of the order of the learned Tribunal.

Accordingly, the appellant nos. 1 to 5 (claimants) are entitled to balance amount of compensation of Rs. 2,10,000/- together with interest @ 6% per annum from the date of filing of the claim application (19.12.2013) till payment.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation and the interest indicated hereinabove by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The appellant nos.1 to 5 (claimants) are directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation and the interest indicated hereinabove, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant nos.1 to 5 (claimants), after making payment of Rs. 5,000/- in favour of the appellant no. 1, widow of the deceased towards spousal consortium, in equal proportion and upon satisfaction of their identity and payment of *ad valorem* Court fees, if not already paid.

The appellant no. 1, being mother and natural guardian of minor appellant nos. 3, 4 and 5 shall receive the share of the minors on their behalf and shall keep the same in a Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minors.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(**Bivas Pattanayak, J.**)