

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1524 of 2009

Smt. Sangita Dey & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
... For the appellants/claimants

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

In an accident happened on 9th January, 2005 at about 9 hours, one Satyabrata Dey died while he was driving a Maruti Omni Private Car, bearing registration no.WB-52-B/5706, through NH-34 towards Ranaghat from Chakdaha side through extreme left side of the road, one Truck, bearing registration no.WB-39/5808, coming from Ranaghat side in rash and negligent manner dashed against the aforesaid Maruti Car. As a result, the driver of the said vehicle, namely, Satyabrata Dey, sustained severe injury. He was taken to Chakdaha Hospital where he succumbed to his injuries.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 before learned Judge, Motor Accident Claims Tribunal, District Judge, Nadia, in connection with MAC Case No.209 of 2005 whereby the learned Tribunal assessed total compensation to the tune of Rs.7,68,000/-.

Not being satisfied, the instant appeal has been preferred by the claimants, i.e., widow and children of the deceased, on the ground that the learned Tribunal did not consider the monthly income of the deceased correctly by deducting provident fund and also on the ground that the learned Tribunal did not consider the future prospect and general damages as well as deduction on the part of the compensation in favour of the widow of the deceased who was the owner of the Maruti Car.

Owner of the offending truck as well as the Oriental Insurance Company Limited, insurer of the Maruti Car, contested the claim petition by filing their respective written statements denying all material averments of the claim petition contending, inter alia, that the claimants are not entitled to any compensation at all.

To prove the case, the claimants examined as many as four witnesses. One Gurudas Saha who, being the Deputy Director of Internal Audit under Directorate of Animal Resources and Animal Health at Writers' Buildings, has been examined as PW-1. In course of his evidence, he proved the income of the deceased who was also an employee of the department. Widow of the deceased, Sangita Dey, was examined as PW-2. In course of her evidence, she corroborated the entire averments of the claim petition, including age and income of the deceased and also the amount of claim. One Paritosh Lohar claiming himself to be an eyewitness to the incident

has deposed that he saw the accident between the two vehicles, i.e., head on collision whereby the driver of the Maruti Car sustained severe injury and he was taken to hospital. He has specifically testified even in cross-examination that both the vehicles were proceeding with high speed before head on collision. One Jagannath Lohar, examined as PW-4, also saw the accident, i.e., head on collision between the two vehicles.

On behalf of owner of the truck, four witnesses were examined. OPW-1 Sujata Biswas has deposed that the accident took place when Maruti Car was trying to overtake one stationary vehicle near the spot got collided with the truck, bearing registration no.WB-39/5808. OPW-2 Sukur Ali Mondal claiming himself to be the driver of the truck, bearing registration no.WB-39/5808, testified in support of the accident happened on 9th January, 2005 at about 9 a.m. on NH-34 while he was driving the truck from Chakdaha to Ranaghat and accident took place when one Maruti Omni Car coming from the opposite side. He also corroborated the OPW-1 regarding the accident at the time of overtaking by Maruti Car. OPW-3 Asabnabi Tarafdar, being the owner of the truck, deposed that his truck was involved in the accident. OPW-4 Swapan Das also deposed about the accident happened on 9th January, 2005 at about 9 a.m. while he was standing in front of a tea stall. He also deposed that while overtaking one stationary vehicle, the Maruti Car dashed the Shaktiman truck which was coming from opposite direction.

In course of evidence, a good number of documents were admitted, including First Information Report, insurance policy of Maruti Car, Salary Certificate, service record and death certificate of the deceased, post-mortem report etc. On behalf of the opposite party/owner, one original driving licence of the driver was admitted and marked as Exhibit-A.

After analyzing the evidences together with the documents, the learned Tribunal assessed the income of the deceased, a salaried person, after deducting the amount towards GPF and Professional Tax and thereafter assessed the compensation to the tune of Rs.7,68,000/-. Learned Judge of the Tribunal returned his finding that the deceased died in an accident by the involvement of two vehicles and in a head on collision. Learned Tribunal held both the vehicles responsible for the accident and, accordingly, the entire award was apportioned between two portion, i.e., Rs.3,84,000/- each. But from the portion of Oriental Insurance Company Limited, learned Tribunal deducted 1/3rd because the claimant no.1 was the owner of the Maruti Car.

In course of argument, Mr. Jayanta Banerjee, learned advocate, appearing on behalf of the appellants/claimants has submitted that the learned Tribunal should not deduce the amount towards GPF and also should have considered the future prospect of 30% in terms of age of the victim and also general damages of Rs.70,000/- in

view of the settled principle laid down by the Hon’ble Apex Court.

Mr. Parimal Kumar Pahari, learned advocate, appearing on behalf of the respondent no.1/Oriental Insurance Company Limited has submitted that awarded amount of the Insurance Company may be divided among the two daughters.

From the claim petition as well as the evidence of PW-1, it is found that the deceased was a government employee and used to earn salary of Rs.14,123/- and after deduction of Rs.110/- towards Professional Tax, the salary comes to Rs.14,013/- in terms of the law settled down by the Hon’ble Apex Court.

Accordingly, I determine the compensation afresh as follows:-

Monthly Income	Rs. 14,013/-
Add: Future prospect 30%	Rs. 4,204/-

	Rs. 18,217/-
Annual Income (Rs.18,217/- x 12)	Rs. 2,18,604/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 72,868/-

	Rs. 1,45,736/-
Multiplier 13 (as per age of the victim)	X 13

	Rs.18,94,568/-
Add: General Damages	Rs. 70,000/-

Total Compensation	Rs.19,64,568/-

So far as head on collision between the two vehicles is concerned, it has been deposed by the two

witnesses, i.e., PW-3 and PW-4 and has been further corroborated by the FIR admitted in evidence. Therefore, there is no dispute between the parties to this appeal that it was a case of head on collision. In that case, the learned Tribunal after analysing evidence, held both the vehicles liable for the accident and accordingly directed to pay the compensation by the owner of the truck, which was not insured with any insurance company at the relevant point of time, as well as the insurance company of the Maruti Car.

In the aforesaid view of the matter, I am of the opinion that the entire compensation have to be apportioned equally, i.e., Rs.9,82,284/- (Rs.19,64,568/- ÷ 2) each and both the insurance company of the Maruti Car and the owner of the truck, bearing registration no.WB-39/5808, should be asked to pay the compensation.

Therefore, two daughters of the deceased Satyabrata Dey are entitled to total compensation of Rs.19,64,568/-.

It is reported that they have already received Rs.2,56,000/- from the respondent no.1/Oriental Insurance Company Limited in respect of Maruti Car.

Therefore, out of 50% of the total awarded compensation, two daughters of the deceased are entitled to the balance amount of Rs.7,26,284/- (Rs.9,82,284/- - Rs.2,56,000/-) from the respondent no.1/Oriental

Insurance Company Limited in respect of Maruti car, bearing registration no.WB-52-B/5706.

That apart, the owner of the truck, bearing registration no.WB-39/5808, is also liable to pay 50% of the total awarded compensation, i.e., Rs.9,82,284/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 27th April, 2005 till the actual payment to the appellants/claimants directly, within eight weeks from the date of this order.

In such circumstances, the respondent no.1/ Oriental Insurance Company Limited is directed to deposit Rs.7,26,284/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 27th April, 2005 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.2,56,000/-, which was deposited by the Insurance Company and already withdrawn by the claimants, before the office of the learned Registrar General of this Court from the date of filing of the claim petition, i.e., on 27th April, 2005 till the date of receipt of the amount by the appellants/claimants.

The appellants/claimants are entitled to withdraw the balance award amount with all interest.

The learned Registrar General is requested to disburse the amount along with interest in favour of Satyapriya Dey and Susmita Dey, being the appellant/claimant nos.2 and 3, who have already attained majority by now by efflux of time, on proper identification.

With the above observations, the appeal, being FMA 1524 of 2009, 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.)