33
09.02.2023
Ct. No.237
pg.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 82 of 2023

Sufal Durlabh
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee
... For the appellant/claimant

Mr. Animesh Das
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 18th March, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 1st Court, Nadia, in connection with MAC Case No.625 of 2005 whereby the learned Tribunal awarded compensation to the tune of Rs.3,10,500/-.

The claim petition under Section 163A of the Motor Vehicles Act, 1988 was filed on account of death of one Susanta Durlov son of Gopal Durlov in a motor accident reported to have been taken place on 28th October, 2005 at about 22.30 hours, while the said Susanta Durlov was standing near Debagram Petrol Pump on NH-34. At that time, one Matador Van, bearing registration no.WB-03/5620, proceeding towards Kolkata with high speed and in negligent manner, all on a sudden, lost its control and dashed Susanta Durlov who died on spot. At the time of death, Susanta Durlov was aged about 21 years having income of Rs.3,000/- per month. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.3,15,000/-.

Originally, the claim petition under Section 163A of the Motor Vehicles Act, 1988 was filed by the parents of the deceased, namely, Gopal Durlov and Sandhya Durlov. Sandhya Durlov died during the pendency of the claim petition and subsequently, during pendency of the appeal, father Gopal Durlov also died and in his place son Sufal Durlabh has been substituted and his name has taken place in the Memorandum of Appeal.

Owner of the offending vehicle did not contest the claim petition but the insurer of the vehicle, New India Assurance Company Limited, contested the case by filing written statement denying all material averments of the claim petition.

To prove the case, one of the claimants Gopal Durlov, father of the deceased, was examined as PW-1 who corroborated the entire contents of the claim petition including the amount of compensation. In course of his evidence, First Information Report, charge sheet, insurance policy, post-mortem report, voter identity card, driving licence of the deceased were admitted.

After considering the evidence on record together with the documents, the learned Tribunal assessed the compensation on the notional income of Rs.3,000/- per month and used the multiplier 17 as per Second Schedule of the Motor Vehicles Act, 1988, and assessed the compensation at Rs.3,10,500/- as just compensation.

The appellant/claimant preferred this appeal not on the ground of computation of compensation but on the ground that the learned Tribunal did not consider the interest on the awarded amount within the meaning of Section 171 of the Motor Vehicles Act, 1988 as well as on the issue of deduction of 50% which ought to have been 1/3rd also in view of the Second Schedule of the Motor Vehicles Act, 1988.

Mr. Jayanta Banerjee, learned advocate, appearing on behalf of the appellant/claimant has submitted also in the same tune as it has taken in the appeal also.

Mr. Animesh Das, learned advocate, appearing on behalf of the respondent no.1/Insurance Company has submitted that both the claimants, i.e., parents of the deceased, died and another brother of the deceased was substituted after eight years. Accordingly, Mr. Das has tried to make this Court understand that for that delay, Insurance Company is not liable to pay any compensation.

However, it is no doubt that the deduction of 50% under the Second Schedule of the Motor Vehicles Act, 1988 is not permissible. Accordingly, deduction should be 1/3rd of the income.

In the aforesaid view of the matter, I determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 12,000/-
	Rs. 24,000/-
Multiplier by 17 (as per Second Schedule)	x 17
	Rs.4,08,000/-
Add: General Damages	Rs. 4,500/-
Total Compensation	Rs.4,12,500/-
Less: Awarded by Ld. Tribunal & received	Rs.3,10,500/-
ENHANCEMENT	Rs.1,02,000/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.4,12,500/-. It is reported that the appellant/claimant has already received Rs.3,10,500/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance compensation amount of Rs.1,02,000/- along with interest @ 6% per annum from the date of filing of the claim petition till 10th February, 2014 and the claimant is also entitled to interest @ 6% per annum on the amount of Rs.3,10,500/- from the date of filing of the claim petition till the deposit of that amount (Rs.3,10,500/-).

Accordingly, the respondent no.1/New India Assurance Company Limited is directed to deposit the balance compensation amount of Rs.1,02,000/- along with interest @ 6% per annum from the date of filing of the claim petition till 10th February, 2014 and the respondent no.1/New India Assurance Company Limited is also directed to deposit interest @ 6% per annum on the amount of Rs.3,10,500/- from the date of filing of the claim petition till the deposit of that amount (Rs.3,10,500/-), before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the compensation amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.97,500/- (Rs.4,12,500/- – Rs.3,15,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount with interest to the appellant/ claimant on proper identification and proof.

With the above observations, the appeal, being FMA 82 of 2023, is disposed of.

All pending applications, if there be any, stand disposed of.

A copy of this order be forwarded to the learned Tribunal 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.)