

06.10.2023
SL No.50
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 204 of 2023

**Ms. Nurjahan Bewa
Vs.
Rajesh Kumar Gupta & Anr.**

Mr. Muktokesh Das
..... for the appellant-claimant.

Mr. Rajesh Singh
...for the respondent Insurance Co.

The Lower Court Record has not reached to this court in spite of submission of Special Messenger Cost by the appellant. However, the LCR is only required to know whether the compensation awarded by the learned tribunal was deposited by the Insurance Company or not.

Mr. Rajesh Singh, learned advocate appearing on behalf of the respondent/Insurance Company was also requested to ascertain whether his client is award as to whether the compensation amount was paid or not. It is the submission of the learned advocate for the respondent/Insurance Company that this being the very old policy, so it is not quite impossible for the office of the Insurance Company to ascertain the matter.

However an affidavit is filed on behalf of the appellant before this court on behalf of Ms. Nurjahan Bewa. Ms. Nurjahan Bewa is the appellant and the mother of the deceased. By swearing the

affidavit before the commissioner of this court she stated that she never received any compensation amount from the learned Motor Accident Claim Tribunal, Additional District Judge, 5th Court, Nadia.

This being the scenario and in considering the affidavit filed by the appellant it appears to me that the instant appeal may be disposed of on considering the issue that appellant has not received any portion of the awarded amount.

The instant appeal is preferred against the Order No. 40 dated 07.08.2012 passed by the learned tribunal in pursuance of an application filed by the appellant under Section 163-A of the M.V. Act. After filing such claim application the owner and the insurer did not turned up in spite of receiving of summons thus the ex-parte order passed by the learned tribunal.

Accordingly, the impugned order of ex-parte was challenged by the appellant only on the ground that the learned tribunal though has awarded a sum of Rs. 1,54,500/- as compensation but the award of compensation does not ordered to carry any interest. The M.A.C. case was filed in the year 2006. So, the appellant is on submission that the Insurance Company must be directed to pay the compensation along with the awarded amount. He further argued that the amount of compensation which was passed

by the learned tribunal is very merge one and this is not the just and proper compensation. He prayed for enhancement of the compensation.

Learned advocate appearing on behalf of the Insurance Company submits that the Insurance Company did not turn up before the learned tribunal. However, the award passed by the learned tribunal appears to be justified and there is no chance to enhance the award.

Heard the learned advocate perused the materials on record. The fact of the case goes to show that the age of the victim is 13 years who died in a road traffic accident. The present appellant is the mother of the said minor child. The income of the minor child was considered by the learned tribunal to be notionally Rs. 15,000/- per annum. I find no infirmity in the observation of the learned tribunal as it has been passed according to the 2nd schedule of Section 163-A of the M.V. Act. I further perused that the reduction towards the personal expenses is 1/3rd and the multiplier was adopted to be 15. So, I find nothing to interfere with the impugned award passed by the learned tribunal. The contention of learned advocate for the Insurance Company appears to me justified. The amount of compensation passed by the learned tribunal can not be enhanced principally. However, the claimant is entitled to get the interest upon the awarded

amount. Accordingly, the award passed by the learned tribunal is hereby modified in respect of interest only.

The Insurance Company, namely, Oriental Insurance Company is directed to pay the compensation amounting to Rs. 1,54,500/- along with interest @ 6% per annum from the date of filing of the claim application within ten weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the same according to the prevalent Rules. As the LCR has not received and this court has no opportunity to peruse the LCR so the instant order should only be effective if the Insurance Company has not paid the awarded amount on the earlier occasion.

The instant FMA 204 of 2023 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

