

18.08. 2023
item No.13
n.b.
ct. no. 551

FMAT 1553 of 2012

**The New India Assurance Co. Ltd.
Vs.
Subal Saha @ Sulen Saha & Ors.**

Ms. Gopa Das Mukherjee,
.....for the appellant.
Mr. Saidur Rahaman,
.... For the respondent.

The delay in preferring the instant appeal is hereby
condoned.

The instant appeal has been preferred against the
judgment and award dated June 30, 2011 passed by the
learned Judge, Motor Accident Claims Tribunal, 1st Court,
Jalpaiguri, in M.A.C case no. 323 of 2009.

The brief fact of the case is that the claimants being
the fateful parents of the deceased filed an application
before the learned Tribunal under Section 163A of the
M.V. Act for getting compensation from the Insurance
Company on the ground that their son was died in a road
traffic accident due to rash and negligent driving of the
driver of the vehicle which was duly insured under the
policy of the present appellant. Learned Tribunal has
considered the application along with written statement
filed by the Insurance Company. After going through the
evidence on record, the claim application was allowed and
the claimants are awarded compensation amounting to
Rs.1,76,000/-.

Being aggrieved by and dissatisfied with the impugned award, the Insurance Company has preferred this appeal.

The brief fact of the accident is that on January 6, 2006 while a pick up van(WB-730 TC-192-32) carrying picnic party was about to cross the high way; at that time one truck(BP-2-1448) coming in high speed and rashed and negligent manner dashed the pick up van. Consequently, the present deceased who was among the picnic party sustained severe injury and died in hospital. The present Appellant/Insurance Company is the insurer of pick up van.

Learned advocate for the appellant submitted before this Court that the pick up van was not liable for the accident. The FIR shows that the pick up van was not running dangerously or high speed. When pick up van was about cross the road at the time the truck bearing registration no. B.P 2 1448 dashed the pick up van; by such several passengers sustained injuries. Learned Tribunal has committed error and come to finding that the present pick van is liable, through it is not at all involved in the alleged accident. The accident solely caused due to rash and negligent driving of the offending truck. So, in this case, the pick up van and the insurer of the pick up van is not liable to pay the compensation.

Learned advocate for the claimant/respondent submitted before this Court that the present claimants are

the parents of the deceased aged about 21 years. The involvement of the vehicle that the pick up van is well proved in this case. The instant case was filed under Section 163A of the M.V. Act. At this juncture, it is not necessary to proof, who is in-default for the commission of the alleged accident. He submitted that the police paper and Post Mortem report shows that the deceased died in a road traffic accident.

He further submitted before this Court that the learned Tribunal has erroneously adopted multiplier on this basis of the age of the parents. Multiplier of this case should be calculated according to age of the deceased.

Perused the materials on record and perused the papers, it is a true fact of the accident was specifically stated in the FIR; P.Ws are also stated the fact of the accident in terms of the FIR. FIR suggests that the accident was caused due to rash and negligent driving of offending vehicle bearing registration no. BP 2 1448. However, it appears that two vehicles are involved in the accident and one of the insurer of one vehicle was made party in this proceeding. The two vehicles are involved in the accident. On perusing the paper and evidences on record I am of the view that both the vehicles are equally responsible for the accident. Thus, both the owner/insurer are in liability to pay the compensation. The 50% of the compensation must have to be shared by the vehicles involved in the said accident. The insurer of

the vehicle that the appellant herein is at liberty to recover the 50% of the compensation amount of this case from the insurer or the owner of other vehicle after paying the entire compensation, in a separate proceeding. However, the deceased was died in a road traffic accident and the involvement of the vehicle is very well proved. At this juncture, the claimants cannot be denied to the compensation.

For the just and proper compensation of this case yearly notional income of the deceased was considered to 24,000/- applicable multiplier of this case would 17, considering the age of the victim to be 21 years. Multiplying the multiplier the award comes to Rs.4,08,000/-. 1/3 is to be deducted towards the personal expenses. So, after the deductions of Rs.1,36,000/-, the award comes to (Rs.4,08,000-1,36,000) Rs. 2,72,000/-. The claimants are also entitled general damages Rs.4,500/-. Thus the award comes to Rs.2,76,500/-. The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application. It appears that the Insurance Company has already deposited the compensation awarded by the learned Tribunal to the tune of Rs.1,76,000/- with the Registrar of this Court.. The said deposit must have carried some interest.

The Insurance Company is directed to deposit the balance amount of (Rs.2,76,500-1,76,000) Rs.1,00,500/-

along with 6% interest per annum from the date of filing of the claim application through the officer of the learned Registrar General, High Court, Calcutta within eight weeks from the date passing of this order. On such deposit the claimants are at liberty to withdraw the already deposited amount along with accrued interest and the balance deposit subject to ascertainment of payment of deposit Court Fees. The officer of the learned Registrar General to pay the compensation amount to the both claimants in equal shares.

The Insurance Company is at liberty to recover 50% of the amount from the insurer or owner of the other vehicle involvement in the said accident in a separate proceeding.

Accordingly, FMAT 1553 of 2012 is disposed of.

All connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)