

26.09.2023
SL No.7
Court No. 551
Ali

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

FMA 1106 of 2021

**Smt. Rina Sutradhar & Ors.
Vs.
United India Insurance Co. Ltd. & Ors.**

Mr. Krishanu Banik
..... for the appellants-claimants.

Mr. Parimal Kumar Pahari
...for the respondent No 1- insurance Co.

The instant appeal is preferred against the judgment and award dated 27th Day of August, 2014 passed by learned Judge, Motor Accident Claims Tribunal, Balurghat, Dakshin Dinajpur in MAC Case no. 158 of 2011.

The brief fact of the case is that the present appellant being the claimants preferred an application before the learned tribunal for getting compensation under Section 163-A of the M.V. Act on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance companies.

The insurance company contested the matter before the learned tribunal and after hearing both the parties the learned tribunal has dismissed the claim case.

Being aggrieved by and dissatisfied with the impugned award the present appeal has been preferred.

The learned advocate for the appellants submits that the impugned award passed by the learned tribunal is erroneous. The learned tribunal has misguided himself in assessing the facts and circumstances of this case and there is a miscarriage of justice. The learned tribunal has only dismissed the claim application on the ground that the name of the deceased was not mentioned in the FIR as well as in the police papers i.e. charge-sheet and other papers. He submits that after the said accident the wife of the deceased i.e. the present petitioner appeared before the local police station and lodged a G.D. entry to the fact that her husband was died in a road traffic accident. The said G.D. entry was proved duly before the learned tribunal but the learned tribunal not considered the same and dismissed the claim case erroneously. He prayed for just and proper compensation.

The learned advocate appearing on behalf of the insurance company submits that the observation of the learned tribunal is correct. The FIR does not disclose the name of the deceased also the charge-sheet not mentioned the name of the deceased. The eye witness who deposed as PW-2 before the learned tribunal was not the FIR maker

so at this juncture there is no erroneous finding on behalf of the learned tribunal.

Heard the learned advocate perused the materials on record. In considering the entire case it appears to me that the FIR was lodged by one Manas Saha regarding the factum of the accident, the manner was stated in the FIR and mentioned the number of the offending vehicle but could not mention the name of the person who died in such accident. But, it has been specifically mentioned that two persons were succumbed to that injuries in the hospital. The FIR disclosed that one cyclist was died. The police paper i.e. the charge-sheet and the seizure list mentioned the seizure of the cycle including the motor cycle of the informant. The appellant no. 1 has informed to the police on 7th of September, 2011 that her husband was died in the said accident by rash and negligent driving of the driver of the offending vehicle and the cycle of her husband was severely damaged. On perusing the PM reports it appears that the PM report mentioned the police case No. i.e. Balurghat PS Case No. 437 of 2011 dated 04.09.2011 including the UD Case No. 317 of 2011 however the observation of the learned tribunal regarding the non-involvement of the vehicle appears to be not justified as the number of the vehicle has already been mentioned in the FIR

itself which was lodged on the self-same day of accident.

In considering the charge-sheet it appears that the IO of this case who conducted the investigation submitted the final report disclosing the fact that two persons were died in the said accident but he did not mentioned the name of any person. However, the conduct of the IO appears to be not justified but such faulty investigation or the faulty final report shall not preclude the present petitioner to get the justice.

Considering the same, I think it necessary this is the case under Section 163-A of the MV Act and the learned tribunal has not considered the PM report including the seizure list and the police papers properly and comes to an erroneous finding. So, I am of considered view that the observation of the learned tribunal regarding the dismissing the instant claim application of the claimants is hereby set aside.

I am of the view that the claimants are entitled to get the just and proper compensation according to the provision under Section 163-A of the MV Act.

The income of the deceased was stated in the claim application Rs.3,300/- and the PW-1 and PW-2 have deposed that effect. I think it necessary for the just and proper compensation should be

calculated according to the income of Rs.3,300/-per month. The deceased was aged about 42 years at the time of accident so according to the 2nd schedule of Section 163-A of the MV. Act.; the applicable multiplier of this case would be 15.

Considering the entire aspects the just and proper compensation is recasted as hereunder:-

Calculation of compensation

1. Monthly Income be assessed as.....Rs.3,300/-
 2. Annual Income be assessed as
...(Rs.3,300/- X 12)..... Rs.39,600/-
 3. Less: 1/3rd
towards personal & living expensesRs.26,400/-
 4. Multiplier 15
(Rs.26,400/-X 15).....Rs.3,96,000/-
 5. Add: General DamagesRs. 9,500/-
- Compensation..... Rs. 4,05,500/-**

After calculation the just and proper compensation comes to Rs.4,05,500/-. The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 1st of November, 2011 within eight 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 recover the same according to prevalent rules subject to ascertainment of payment of requisite court fees.

The instant FMA 1106 of 2021 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.)