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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1130 of 2013
with
IA No. CAN 1 of 2012 (CAN 8443 of 2012)
with
CAN 3 of 2019 (CAN 704 of 2019)
with
CAN 4 of 2023

The New India Assurance Co. Ltd.
Vs.
Pradyumna Kumar Sahu & Ors.

with

COT 88 of 2013

Pradyumna Kumar Sahu & Anr.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Sanjay Paul
... For the appellant/Insurance Co. in FMA 1130 of 2013 & respondent no.1/ Insurance Co. in COT 88 of 2013

Mr. Jayanta Kumar Mandal
... For the respondents/claimants in FMA 1130 of 2013 & Cross Appellants/ Claimants in COT 88 of 2013

In re: CAN 4 of 2023

On behalf of the claimants/cross appellants, this application is filed on account of death of the respondent/ claimant no.2, Supriya Sahu, along with a prayer for substituting the names of her son Subhasis Sahu and daughter Meenakshi Sahu as respondent/claimant nos.2(a) and 2(b). This application has been filed along with a death certificate in respect of Supriya Sahu, the claimant no.2.

Heard both sides.

Considering the facts and circumstances, the prayer for substitution is allowed. Son and daughter of the deceased claimant, namely, Subhasis Sahu and Meenakshi Sahu are substituted in place and stead of Supriya Sahu, since deceased.

Department is directed to carry out the necessary amendment in the cause of the Memorandum of Appeal forthwith.

CAN 4 of 2023 stands disposed of.

In re: FMA 1130 of 2013 with COT 88 of 2013

This appeal is directed against the judgment and award dated 30th May, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Barasat, North 24-Parganas, in connection with MAC Case No.150 of 2007 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.59,38,660/- along with interest @ 6% per annum from the date of filing of the claim petition.

Being aggrieved by and dissatisfied with the said judgment, New India Assurance Company Limited preferred this appeal on the ground that the learned Tribunal did not consider the deduction of 50% from the income of the deceased as well as nothing was deducted towards tax paid by the deceased at the time of accidental death.

The claim petition was filed on account of death of one Devasish Sahu who was an employee of Cognizant Technology Solutions India Private Limited, Salt Lake, having income of Rs.74,177/-. It was alleged that on 8th March, 2007 at about 6.00 hours the offending vehicle, bearing registration no.WB-25B/4175 (Ambassador), was proceeding from Nicco Park to J.K. Saha Bridge, with extreme speed and also in rash and negligent manner, without blowing any horn also violating the traffic rules, directly knocked down Devasish Sahu and one Tapas Das. As a result of which the victim Devasish Sahu and Tapas Das got severe injuries on their person. They were moved to Bidhannagar Sub-Divisional Hospital where Devasish Sahu was declared as 'brought dead'. After the accident, Bidhannagar (East) Police Station Case No.15 dated 8th March, 2007 under Sections 279/338/427/304A of the Indian Penal Code was started and after investigation charge sheet was submitted against the driver of the vehicle. That is why the claim petition was filed by the claimants with a prayer for compensation to the tune of Rs.60,00,000/-.

Owner did not contest the claim petition but the New India Assurance Company Limited with whom the offending vehicle was insured contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that there was no negligence on the part of the vehicle for the accident and the claimants are not entitled to any compensation, as prayed for.

To prove the case, the claimants examined as many as three witnesses, namely, Pradyumna Kumar Sahu, father of the deceased, as PW-1, one Soumitra Mondal as PW-2 and one Sandipan Roy as PW-3. In course of their evidence, First Information Report, charge sheet, insurance policy, post-mortem report, pay slip of the deceased, death certificate, admit card etc. were admitted in evidence and marked as Exhibit 1 to 10.

Learned Judge of the Tribunal after assessing the evidence on record together with the documents returned his finding that there was accidental death of Devasish Sahu, who was an employee of Cognizant Technology Solutions India Private Limited, Salt Lake, and accordingly assessed compensation considering the earning of the deceased as Rs.74,177/-.

By filing a cross-appeal, being COT 88 of 2013, the claimants made prayer for considering the future prospect, general damages and the proper multiplier in terms of the age of the deceased which were not considered by the learned Tribunal.

After scrutiny of the evidence of PW-1 and PW-2, I do not find any reason to interfere with the observation of the learned Tribunal regarding death of Devasish Sahu in a road traffic accident by the involvement of the vehicle, bearing registration no.WB-25B/4175 (Ambassador) and the accident took place only due to rash and negligent driving of the vehicle. That apart, none of the learned advocates appearing on behalf of the parties to this appeal raise the issue of accidental death of Devasish Sahu by the involvement of the vehicle mentioned above.

On perusal of evidence of PW-3, Junior Executive of Cognizant Technology Solutions India Private Limited, I find that Devasish Sahu was an employee of the institution and he used to draw his salary of Rs.74,177/- which was further substantiated by the salary certificate admitted in evidence as Exhibit-5. It is true that the deceased used to draw salary of Rs.74,177/- per month but the learned Tribunal at the time of assessing salary did not deduct the amount towards income tax of Rs.1,604/- and professional tax of Rs.200/- from the salary of the deceased. Therefore, after deduction of income tax and professional tax, the income of the deceased comes to Rs.72,373/-. It is needless to mention that in view of the principle laid down by the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**, the claimants are also entitled to future prospect @ 40% of the income and general damages of Rs.33,000, including 10% increase every three years.

In the aforesaid conspectus, I propose to modify the compensation as follows:-

Monthly Income (Rs.74,177/- – Rs.1604/- + Rs.200/-)	Rs. 72,373/-
Annual Income (Rs.72,373/- x 12)	Rs. 8,68,476/-
Less: 50% Deduction (personal expenses)	Rs. 4,34,238/-
	Rs. 4,34,238/-
Add: Future prospect (@ 40%)	Rs. 1,73,695/-
	Rs. 6,07,933/-
Multiplier by 17 (as per Second Schedule)	X 17
	Rs.1,03,34,861/-
Add: General Damages	Rs. 33,000/-
Total Compensation	Rs.1,03,67,861/-

For the reasons, it is seen that the claimants/cross-appellants are entitled to the total compensation to the tune of Rs.1,03,67,861/-.

It appears from the record that on behalf of the appellant/Insurance Company, the entire amount awarded by the learned Tribunal to the tune of Rs.59,38,660/- was already deposited before the office of the learned Registrar General of this Court. Learned advocate appearing on behalf of the appellant/Insurance Company has also submitted that interest @ 6% per annum was not deposited with the awarded amount before the office of the learned Registrar General on 14th January, 2013.

It is asserted by the learned advocate appearing on behalf of the respondents/claimants/cross-appellants that they already withdrew the amount of Rs.30,00,000/- on 23rd July, 2014 out of the awarded amount of Rs.59,38,660/- deposited by the appellant/Insurance Company.

Therefore, the claimants/cross-appellants are entitled to the balance compensation amount of Rs.44,29,201/- (Rs.1,03,67,861/- – Rs.59,38,660/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 23rd July, 2007 till the deposit of the amount. The claimants/cross-appellants are also entitled to the interest @ 6% per annum on the amount of Rs.59,38,660/- from 23rd July, 2007 till 14th January, 2013. The claimants/cross-appellants are also entitled to withdraw the remaining amount of Rs.29,38,660/- (Rs.59,38,660/- – Rs.30,00,000/-) with accrued interest which was already deposited by the appellant/Insurance Company with the office of the learned Registrar General on 14th January, 2013.

Accordingly, the appellant/New India Assurance Company Limited is directed to deposit the enhanced amount of Rs.44,29,201/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 23rd July, 2007 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 appellant/Insurance Company is also directed to deposit interest @ 6% per annum on the amount of

Rs.59,38,660/- from 23rd July, 2007 till 14th January, 2013.

The claimants/cross-appellants are entitled to withdraw the entire awarded amount with interest and accrued interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.43,67,861/- (Rs.1,03,67,861/- – Rs.60,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the entire compensation amount along with interest and accrued interest to the claimants/cross-appellants in equal share on proper identification and proof.

With the above observations, both the appeal, being FMA 1130 of 2013 and the Cross-Appeal, being COT 88 of 2013, stand 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.)