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**RUP**

**CALCUTTA HIGH COURT CIRCUIT BENCH AT JALPAIGURI**

**FMAT (MV) 17 OF 2022**
**IA No. CAN 1 of 2022**
**CAN 2 of 2022**

**Reliance General Insurance Co. Ltd.**
**Versus**
**Smt. Arati Barman & Ors.**

Mr. Partha Bhowmick. ... for the appellant.

Mr. Gobinda Saha,
Mr. Tamal Kr. Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey,
Mr. Sanghai Chowdhury.
... For the respondents.

This appeal has been preferred at the behest of Reliance General Insurance Company Limited assailing the judgment passed by Motor Accident Claim Tribunal, Additional District Judge, 2nd Court, Siliguri, Darjeeling in connection with Motor Accident Claim Case No. 41/14 under Section 166 of the Motor Vehicle Act, 1988.

This appeal preferred only on two grounds i.e. excessive compensation in terms of an abnormal income of deceased and for reduction of interest at the rate of 9% imposed on the awarded amount.

The claim petition under Section 166 of the Motor Vehicle Act, 1988 was filed on account of accidental death of Sambhu Barman i.e son of the claimant/respondent No.1, Smt. Arati Barman on

04.02.2014 at 00.30 hrs. when the said Sambhu Barman was proceeding towards his residence with his motor cycle bearing registration No.WB-74-S-3350, came across an accident at the instance of another motor cycle bearing registration No. WB-74-TC-136 coming from opposite direction with high speed and in negligent manner. At that time the offending motor cycle coming with high speed collided with motor cycle bearing registration No.WB-74-S-3350 whereby the said Sambhu Barman was travelling. After accident Sambhu Barman sustained severe injury on his person and he had taken to North Bengal Medical College and Hospital where he succumbed to his injury.

Claimants i.e. mother and sister of the deceased filed the claim petition under Section 166 of the Motor Vehicle Act, 1988 with a prayer for compensation to the tune of Rs.16,41,500/-.

As Insurance Companies in respect of both vehicles were added as a party to the claim petition, the Insurance Companies namely, National Insurance Company and Reliance General Insurance Company contested the claim petition by filing their respective written objection contending, *inter alia*, that those vehicles were not responsible for the accident and claimants are not entitled as prayed for.

To prove the case, three witnesses were examined namely Arati Barman i.e the mother of the deceased as

PW-1, one Sushanta Majumdar claiming himself to be an eye witness, as PW-2 and one Rekha Roy Singha, Gram Panchayat Pradhan of Nalash Nijamtara, as PW-3.

In course of their evidence, a good number of documents were admitted in evidence including Chargesheet, Seizure List, PM report, Insurance Policy, Death Certificate etc. as exhibit 1 to 13.

Learned Tribunal after evaluating entire evidence in terms of documents admitted in evidence returned its finding that claimants are entitled to compensation to the tune of Rs.20,78,400/- along with 9% per interest till payment.

This appeal preferred at the instance of Insurance Company, learned advocate Mr. Partha Bhowmick submits that the observation of the learned Tribunal regarding income of the deceased at the time of accident cannot be accepted only in terms of trade licence and accordingly it is submitted that amount of income on which compensation was calculated should be reduced.

Mr. Bhowmick, learned advocate appearing on behalf of the Insurance Company has further submitted that interest at the rate of 9% be also reduced.

On the contrary, Mr. Gobinda Saha, learned advocate appearing for respondents/claimants has submitted that learned Judge duly considered the evidence of the witnesses together with the trade licnece (exhibit-6) and rightly came to his final opinion regarding assessment of the monthly income. It has been further submitted on behalf of the respondents/claimants that learned Judge of the Tribunal also took the ownership of the deceased in respect of motor cycle into consideration in assessing the income of the deceased.

From the evidence of PW-1 i.e. mother of the deceased, it is found that at the time of alleged accident her son Sambhu Barman, since deceased, was a man of 21 years and he used to earn Rs.12,000/- per month from his Grocery Business.

From the cross-examination, I find that on behalf of the Insurance Company two questions were put. First is about status of the shop. In reply to that question PW-1 specifically deposed that her son used to run a Grocery Shop from their house and in reply to the second question PW-1 replied that *"The grocery shop of my son is presently closed down."*

On careful scrutiny of the entire cross-examination, I do not find any suggestion denying the existence of shop. From the cross-examination of PW-1, it is clearly intelligible that after the accident the shop was closed. Cross-examination of PW-1 clearly speaks volumn of the existence of the grocery shop which was ratified by PW-3, Rekha Roy Singha, Gram

Panchayat Pradhan of Nalash Nijamtara who issued the trade licnece (exhibit-6) in favour of the deceased Sambhu Barman.

Ownership of the motor cycle bearing registration No. No.WB-74-S-3350 was not disputed at the instance of Insurance Company at any point of time.

Therefore, the deceased being owner of a motor cycle as well as grocery shop cannot be said to have earned at least less than Rs. 12,000/-.

Considering all facts and circumstances appearing in the evidence, I am unable to disagree with the observation made by the learned Tribunal with regard to the assessment of income at the time of computing award.

So far as the rate of interest is concerned, I am of the opinion that interest at the rate of 6% will meet the end of justice subject to provision of Section 171 of the Motor Vehicle Act, 1988. Interest should be imposed at the rate of 6% per annum from the date of filing of the application till the date of deposit of the amount before the Tribunal.

I refrain myself going into the issue of accidental death of Sambhu Barman as no argument was advanced on behalf of either of the parties to this appeal and nothing contrary appearing in the evidence and to add to that there is sufficient evidence on record to justify the accidental death at the instance of motor cycle bearing no. No. WB-74-TC-136 which was duly insured with the Reliance General Insurance Company Limited/appellant.

In the aforesaid view of the matter, Insurance Company is directed to pay the awarded amount of Rs. 20,78,400/- along with interest at the rate of 6% per annum from the date of filing (13.03.14) of the claim petition after deducting statutory deposit of Rs.25,000/- under Section 166 of the Motor Vehicle Act till the date of deposit of the awarded sum with interest before the Tribunal.

Insurance Company is also directed to deposit the awarded sum with interest within six weeks from the date, before the Tribunal.

Learned Tribunal is requested to disburse the amount to mother, respondent no.1/Arati Barman on proper identification and proof.

Respondent no.1/Arati Barman is at liberty to withdraw the amount deposited towards statutory deposit along with interest accrued thereon.

With the above observation, the appeal being **FMAT (MV) 17 of 2022** stands disposed of**.**

All pending applications, if there be any, stands 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.)***