

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 458 of 2013

Smt. Supriya Maiti & Ors.

Versus

National Insurance Co. Ltd. Ors.

With

FMAT 582 of 2013

National Insurance Co. Ltd. & Ors.

Versus

Smt. Supriya Maiti

For the Appellants/claimants. : Mr. Krishanu Banik, Advocate.

in FMA 458 of 2013 and :Mr. Tathagata Banik, Advocate

Respondent in FMAT 582 of 2013

For the appellant in FMAT 582 : Mr. Rajesh Singh, Advocate

of 2013 and respondent

In FMA 458 OF 2013

For the Oriental Ins. Co. Ltd. :Ms. Gopa Das Mukherjee, Advocate

Hearing on : 31.01.2024

Judgment on : 02.02.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and award dated 8th Day of August, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Tamluk Purba Medinipur, in MAC Case No. 70/434 of 2009/2008.
2. The brief facts of the case is that the present appellants being the claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation.
3. The claim case was contested by the two Insurance Companies by filing respectful written statement. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.3,93,500/- in favour of the appellants No. 1, 2 and 4. Being aggrieved by and dissatisfied with the said award, the present appeals have been preferred by the claimants.
4. The brief facts of the case is that the predecessor of the appellant on 11.9.2008 at about 3.45 a.m. while travelling from Kharagpur side to Haldia side by Maruti Swift car bearing No. WB-30C/9588 keeping the left side of the road one truck bearing No. WB-33A/9501 proceeding ahead of the car in the same direction suddenly applied brakes and consequently the Maruti car dashed the truck from behind. As a result the driver of the car and the victim suffered serious injuries, the victim died on spot. The claim

application stated the income of the victim to be Rs.6,000/- per month.

5. The learned tribunal after considering the facts has put the responsibility of the accident upon the driver of the Maruti car and directed the insurer of the Maruti car i.e. the National Insurance Company Ltd. to pay the compensation. The learned tribunal has not also considered the income of the deceased to be Rs. 6,000/- per month; but fix the income notionally to be Rs. 3,000/- per month.

Hence this appeal.

6. Learned advocate for the appellant submits that the observation of the learned tribunal is not correct. The claim application stated to the fact that the driver of the truck is responsible. I witness (PW-2) also deposed that the truck put the sudden break which caused the accident. But, the learned tribunal has erroneously fixed the responsibility only upon the driver/insurer of the Maruti car for the responsible for the accident. He also argued that by virtue of decision of Hon'ble Apex Court in ***Khenyei Vs. New India Assurance Co. Ltd. & Ors.*** reported in **ACC 2015 (II) 657**, has held that:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint fort feasors and to recover the

entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment of the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal jto determine the extgent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award”.

7. He also cited a decision of Hon’ble Supreme Court passed in ***Sunita & Ors. Versus Rajasthan State Road Transport Corporation & Anr.*** reported in ***(2019) AIR (S.C.) 994*** wherein the Hon’ble Supreme Court has held that the evidence of eye witness cannot be disbelieved and reliance cannot be solely placed upon the investigation of the police.

He also cited ***Bimla Devi & Ors. Versus Himachal Road Transport Corporation & Ors.*** reported in ***(2009) ACJ 1411*** wherein the Hon’ble Supreme Court has held that

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an acci8dent caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to

establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High court should have taken into consideration the respective stories set forth by both the parties”.

8. The learned advocate appearing on behalf of the National Insurance Co. Ltd has submitted that the truck is entirely responsible for the accident. The FIR is not clear about who is responsible for the accident. But, the fact suggests that the truck has put the sudden break which resulted the accident. The observation of the learned tribunal regarding fixing liability only upon the driver of the Maruti car is erroneous. In support of his contentions, he cited a decision of Hon’ble Supreme Court in ***National Insurance Company Ltd. Vs. Chamundeswari & Ors.*** reported in ***(2021) ACJ 2558*** wherein the Hon’ble Supreme Court has held that:

“it is clear from the evidenced on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal

evidence by examining the driver of Eicher van, the High court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report”.

9. Learned advocate appearing on behalf of the Oriental Insurance Company Ltd. submits that the learned tribunal has committed no error. The FIR as well as the charge-sheet submitted by the police stated that the driver of the Maruti car is responsible for the accident. No other view is possible in this case. So, the National Insurance Company is liable to pay the compensation.
10. The learned advocate for the appellants further argued that the learned tribunal has not considered the income of the deceased properly and not considered the evidence of PW-3. The PW-3 is the co-employer of the deceased who has filed one certificate of income (exhibit-6). The learned tribunal should have award the compensation according to the (exhibit-6).

11. Heard the learned advocates perused the observation of the learned tribunal also perused the observation of Hon'ble Supreme Court in ***Khenyei***.
12. Considering the facts of the case it appears to me that the two vehicles are involved in the alleged accident, the Maruti car dashed behind a truck. The FIR suggests that due to rash and negligent driving of the driver of the Maruti car the accident happened. The FIR also suggests that the truck has put sudden break. During cross examination of PW-2 (eye witness) by the Oriental Insurance Co. Ltd., he stated that the Maruti car was about 60 to 70 feet behind the lorry at the time of accident. The distance in the high way is enough. So, the accident could not be happened if the driver of the truck had not put the sudden break. It is true that the cars in the high way are running in excessive high speed. High way are made to run the car in high speed. However, the distance between the car were 60-70 feet. Thus, considering the issue it appears that the driver of the Maruti car was running the car by maintaining safe distance but as the driver of the truck put sudden break the accident occurs. So, in this case, it appears to me that both the drivers of the vehicles are jointly responsible for the accident. The respondent Nos. 2 and 3 being the insurers of both the vehicles are jointly responsible to pay the compensation at the ratio of 50%:50%.
13. In considering the income of the deceased it appears that the learned tribunal has assessed the notional income of the deceased

to be Rs. 3,000/- per month. The claim case stated that the deceased was a Supervisor of Mechanical Maintenance under M/S M.B. CARRTAGE. PW-3 deposed to prove the occupation and income of the deceased. However, the certificate of income (exhibit-6) has no supporting co-related documents of or salary statement; still then the occupation of the deceased cannot be denied. Considering the same, in this case the income of the deceased cannot be less than Rs. 4,500/- per month.

The claimants are entitled to get the future prospects and general damages according to the observation of Hon'ble Apex Court in **Pranay Sethi**. The age of the deceased was 32 years at the time of accident. So, the claimants are entitled to 40% of the establish income of the deceased towards the future prospects. The claimants are entitled to get the future prospects and general damages according to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**

The above observation the award passed by the learned tribunal need be modified:

14. The just and proper compensation of this case is calculated as hereunder:

Calculation of Compensation

i) Income	:Rs.4,500/-
ii) Annual Income (Rs.4,500 X 12)	:Rs.54,000/-
iii) Add: 40% future prospects	: <u>Rs. 21,400/-</u>
	:Rs.75,600/-

iv) Less: 1/3 rd deduction towards personal Exp.	:Rs. 25,200/- :Rs.50,400/-
v) Applicable Multiplier 16 (Rs.50,400 X 16)	:Rs.8,06,400/-
vi) Add General Damages	:Rs.70,000/- :Rs.8,76,400/-

15. The award shall carry 6% interest from the date of filing of the claim application. Both the insurance companies are directed to pay the 50% of the award each i.e. Rs. 4,38,200/- each. The Insurance Companies are directed to pay the compensation through the office of the learned Registrar General, High Court, Calcutta within six weeks from the date of passing of this order. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same amount in the name of the appellant Nos. 1, 2 and 4 by equal three account payee cheques.
16. The payment of compensation is subject to the payment of deficit Court Fees, if any. The office of the learned tribunal shall act upon the certified copy of this order in receiving the DCF, if any.
17. The instant FMA 458 of 2013 alongwith FMAT 582 of 2013 is disposed of.
18. The office is directed to return the LCR immediately.
19. The office is further directed to amend the name and address of the claimants by virtue of prayer of CAN 1 of 2023.
20. All connected CAN applications are disposed of.

21. Interim orders, if any, stand vacated.
22. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)