

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

FMA 7 of 2013
IA No. CAN/1/2016 (Old No. CAN/8057/2016)
With
FMA 8 of 2013
IA No. CAN/1/2016 (Old No. CAN/8056/2016)

Pawan Kumar Lakra & Ors.
Vs.
The Oriental Insurance Co. Ltd.

For the appellants-claimants
in FMA 7 and 8 of 2013 : **Mr. Jayanta Kumar Mondal**

For the respondent No. 2 in
FMA 8 of 2013 and respondent
No. 1 & 2 in FMA 7 of 2013 : **Mr. Rajesh Singh**

For the respondent No. 1
Oriental Ins. Co. in FMA 7 of 2013 : **Ms. Sucharita Paul**

Heard on : **18.08.2023**
Judgment on : **02.02.2024**

Subhendu Samanta, J.

- 1.** Both the appeals are being preferred by the common appellants against the 2 judgments and award, similar in nature by the Learned Judge of Motor Accident Claim Tribunal, learned District Judge, Purulia passed on 16th and 17th August, 2012 in MAC Case No. 25 of 2011 and 26 of 2011.
- 2.** As the common facts and law are involved in this matter, so both the appeals are taken up together for the brevity of discussion. The present appellants being the claimants have preferred two (02) applications before the Learned Tribunal u/s –

166 of MV Act for getting compensation on the ground that their father and mother were 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 company. The claim case was contested by the Insurance Company by filing written statement.

3. After hearing the parties and after receiving the evidences, the learned Tribunal has awarded a sum of Rs.50, 000/- together with 7% interest per annum from the date of filing of the claim application in respect of two (02) M.A.C case separately. Being aggrieved by and dissatisfied with the impugned award, the present appellants have preferred these appeals for enhancing of the award.

4. Learned advocate for the appellant submits that the learned Tribunal has failed to appreciate the facts and circumstances of this case and came to an erroneous findings. He argued that the learned Tribunal has preferably passed the impugned award without following the principles of law of the Hon'ble Supreme Court in **Smt. Sarla Verma**. He further argued that the learned Tribunal has committed error by not awarding the compensation under the structured formula, he prayed for just for proper compensation.

5. Learned advocate appearing on behalf of the insurance company submits that the impugned award passed by the learned Tribunal is just an appropriate to the facts and circumstances of this case.

6. The present appellants are the son of the deceased who was a retired employee. The major sons i.e. the present appellants are not at all dependent upon the income of the deceased who was a retired person. The learned Tribunal on observing the ratio laid down by the Hon'ble Supreme Court in **Smt. Manjuri Bera** has allowed the compensation to the tune of Rs.50,000/- that is actually correct and

proper according to the facts and circumstances of this case. So he prayed rejection of the instant appeal.

7. Learned advocate appearing on behalf of the claimant submits that the Hon'ble Supreme Court in **Smt. Sarla Verma** has held that in case of loss of dependent, the structure formula has to be followed in awarding the compensation. In the case the structure formula was not adopted so the learned Tribunal has committed error. He also cited the decision of the Hon'ble Supreme Court in **K. Ramya and Others Vs. National Insurance Company Limited** reported in **2022 4 TAC 380 (Supreme Court)** wherein the Hon'ble Supreme Court has awarded just and proper compensation on the basis of dependency. He also cited a decision of a co-ordinate Bench of this Court passed in the **Bajaj Allianz Insurance Company Limited and Another Vs. Bipasa Roy and Other** reported in **2022 (1) T.A.C 59 (Cal)** wherein the co-ordinate Bench has awarded the compensation in a fatal accident case of a deceased aged about 60 years in favour of his marriage daughter and adult son. On the view that they are the legal representatives and entitled to get the compensation

8. He also cited a decision of Hon'ble Apex Court in **Montford Brothers of St. Gabriel & Another. Vs. United Insurance Company & Others** reported in **2014 SAR (Civil) 303** wherein the Hon'ble Supreme Court has awarded the compensation in favour of a society of brothers by holding that they are entitled to get the compensation.

9. He also cited the decision of **Vimal Kanwar & Others Vs. Kishore Dan & Ors.** reported in **2013 SAR (Civil) 584** where in the compensation has to be awarded to the legal representatives.

10. He also cited the Division Bench of this Court in **Binapani Ghosh & Others Vs. New India Assurance Company Limited & Another** reported in **2013 (3) T.A.C. 529 (Cal)** wherein the deceased was a retired School Teacher died in a motor accident and award was given to the legal representative considering the pensionary benefit to be the earning of the deceased.

11. Learned Advocate for the appellants further argued that the present appellant being the legal representatives are entitled to get the compensation. The present appellant being the sons though major are also entitled to get the compensation be virtue of decision of Hon'ble Apex Court in **National Insurance Company Limited Vs. Birendar & Others.**

12. Learned Advocate for the insurance company, Mr. Rajesh Singh submits that the present appellant being the major sons are not at all entitled to get the compensation. He placed the **West Bengal Service (Death and Retirement Benefit) Rules, 1971**. He placed the **Rule No. 104** where in it has been enumerated that the family pension is available in the case of widow/widower upto the date of death or re-marriage whichever is earlier; and, in the case of minor son until he attains the age of majority. He also placed the **Ministry of Personnel, Public Grievances and Pensions Notification dated 20th December, 2021** wherein he placed **Para 9 (a)(i)** wherein it has been enumerated that if the deceased is a government servant or the pensioner is not survived by a widow or widower, the family pension shall be paid to the child or children in case of a son who is unmarried, below the age of 25 years and not earning his livelihood.

13. Mr. Singh argued that in the present case the pensionary document was not placed so it is quite impossible for the Tribunal to assess the pensionary income of the deceased. Moreover, the present petitioners are the major sons and they are not entitled to the family pension and are not at all dependent upon the income of the deceased. In the same accident both the husband and wife were died, so in case, if the widow may file the claim application that can only be allowed.

14. He contradicted the judgment of Hon'ble Division Bench of this Court in **Binapani Ghosh** by citing that the pensionary benefit of the deceased was placed before the Division Bench and the claimant was the widow. So, the ratio of Binapani Ghosh is not applicable in this case. He also contradicted the ratio of the decision of the Hon'ble Apex Court passed in **National Insurance Company Limited Vs. Birender & Others** by referring the **paragraph No. 15**. He argued that in paragraph 15 of **Birender** it has been specifically enumerated the major son had very meager earning; thus, it has been proved before the Apex Court that they were actually dependent upon the earning of their mother. On considering that fact the Apex Court has allowed the major son to get the compensation. In the present case nothing has been placed before the learned Tribunal to award the compensation in favour of the claimants. So, he prayed dismissal of the instant appeal.

15. Heard learned Advocate. Perused the material on record, it appears that the Hon'ble Supreme Court in **Smt. Sarla Verma** has enumerated that the dependents are entitled to get the compensation. It is the law enumerated under Section 166 of Motor Vehicle Act that the legal heirs/ legal representatives of the deceased may file an application for compensation.

16. In the present case, in a motor vehicle accident both the husband and wife died, they are the father and mother of the present appellant. It has not been proved before the learned Tribunal, what was the pensionary benefit of the deceased (father) or what is the earning of the present petitioner; more specifically, it has not been proved before the learned Tribunal that claimants are at all dependent upon the income of the deceased.

17. The learned Tribunal in considering the entire facts and circumstances is of opinion that by virtue of decision of Hon'ble Supreme Court in **Smt. Manjuri Bera** where a legal representative who is not dependent and file an application for compensation, the quantum cannot be less than the liability referable to section 140 of the said Act. The observation of the learned Tribunal appears to be justified. The claimants have failed to prove the fact that they were actually dependent upon the income of the deceased.

18. On that score, I find no justification to entertain the finding of the learned Tribunal. However, the present appellant being the children of the deceased must have suffered immense mental pain and agony due to loss of their parents, so in that score they are entitled to get the compensation amounting to Rs. 50,000/- more under the head of non-pensionary.

19. The compensation under the head of non-pensionary shall carry 6% interest per annum from the date of filing of the claim application till today. The Insurance company is directed to pay the compensation through the office of the Learned Registrar General, High Court at Calcutta within 6 weeks. After such deposit the claimants are to liberty to receive the same on equal shares. Payment of

compensation is subject to the ascertainment of payment of deficit Court fees.

20. Accordingly FMA 7 of 2013 and FMA 8 of 2013 along with the connected CAN applications are disposed of.

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

(Subhendu Samanta, J.)