IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 294 of 2014

(FMAT 1009 of 2013)

Smt. Shyamali Mondal & Anr.

Vs.

Smt. Ratna Nandi & Anr.

For the Appellants	:	Ms. Swarnali Biswas.
For the Respondent No.1	:	None.
For the Respondent No. 2	:	Mr. Rajesh Singh.
Hearing concluded on	:	02.07.2024
Judgment on	:	22.07.2024

Shampa Dutt (Paul), J.:

1. The present appeal by the claimants has been preferred being aggrieved by the Judgment and Award dated 26.06.2013 passed by the learned 1st Additional District and Sessions Judge, Motor Accident Claims Tribunal, Barasat, in M.A.C.C. No. 103 of 2010/M.A.C.C. No. 480 of 2010, **under Section 166 of the M.V. Act.**

2. **The Facts**:-

*On 13.07.2010 at about 6 p.m. when the victim Souman Mondal was going on his Bicycle towards Basirhat along Taki Road and when he reached near Matitra Bagan, his said Bi-cycle was dashed from behind by a lorry bearing registration No.WB-41D/5236 (hereinafter referred to as the **offending vehicle**), in reckless and negligent manner and as a result of which the victim sustained serious injuries on his person and died instantly on the spot.*

At the time of the alleged accident, the victim was aged about 24 years and he used to earn Rs.130/- per day as 'mason' and that because of his premature death, the petitioners, being his mother and wife have been suffering immensely.

3. The opposite party no. 1/owner did not contest the claim.

4. O.P. No. 2/Insurance Company has contested this case by filing written statement denying all the material allegations contained in the claim petition and prays for dismissal of this case. The O.P. No. 2 in its W.O. has taken the plea that it is not liable to pay any compensation to the claimant, as the owner of the offending vehicle has violated the terms and conditions of the Insurance Policy. Apart from that, it has also taken all sorts of statutory pleas as available under the M.V. Act 1989 in its W.O.

5. The claimants examined two witnesses and produced relevant documents which were proved and marked exhibits 1 to 10.

6. The opposite party no. 2/Insurance Company examined one witness and proved exhibit A & B.

7. On completion of hearing the learned Tribunal held as follows:-

> *"To sum up my discussion regarding both the issues I am of the view that petitioner and her (?) minor son are entitled to get Rs.4,17,500/- along with interest @ 6% p.a. from the date of institution of this case i.e. 28.07.2010, till its realization as per Section 171 of the M.V. Act as compensation from the O.P. No. 1/owner of the offending vehicle in the instant case and the O.P. No. 2 is exonerated from its liability to indemnify the O.P. No. 1 i.e. the owner of the offending vehicle"*

8. Being aggrieved the claimants (mother and wife of the victim) have preferred this appeal on the following grounds:-

i) That the learned Tribunal erroneously directed the opposite party/owner to make the payment of the compensation when it should have directed the Insurance Company to make payment and then recover the same from the owner of the offending vehicle, which was being driven without a valid licence.

ii) The learned Tribunal was wrong in not considering the income of the deceased to be Rs.3900/- per month (Rs.130/- per day) and instead considering the same to be Rsr.3000/- per month, thus causing prejudice to the petitioner.

9. From the materials and evidence on record, the following is evident:-

a) **O.P.W. 2 and Exhibit B has proved that the driver of the offending vehicle had no valid licence at the time of accident.**

b) P.W. 2 is an eye witness, who proved the accident and that the vehicle was being driven in a rash and negligent manner (Exhibit 3, Charge sheet).

c) The deceased was aged 24 years at the time of accident (P.M. Report), so **multiplier of 18** will be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121)***

d) There being no proof of income, **income be fixed at Rs.4000/-** per month date of accident being 26.06.2013. ***(Laxmi Devi & Ors. vs. Md. Tabbar & Anr. (2008) 2 TAC 394 (SC))***

e) Number of claimants being 2, **1/3rd** is to be deducted as personal expenses. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (Supra))***

f) **Future prospects at 40%** of income is to be added. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680).***

g) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of

10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

10. **Thus, the "Just Compensation" in this case would be as follows:-**

Monthly Income	*Rs. 4,000/-*
Annual Income (4,000 x 12)	*Rs. 48,000/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 16,000/-*
	Rs. 32,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 12,800/-***
	Rs. 44,800/-
Multiplier x 18 *(44, 800 x 18)*	***Rs. 8, 06, 400/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 8, 90, 400/-***

11. It is submitted that the claimants have not received the amount as granted by the tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs. 8,90,400/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

12. Thus, the Respondent No. 2/Insurance Company shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimants in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

13. The Hon'ble Supreme Court in ***Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022,*** held as follows **Para 8 to 14**:-

> *"**8.** Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.*
> ***9.*** *In the instant case, the appellant has relied on the judgment dated 21.02.2017 passed by this Court in Civil Appeal No.(s). 3047 of 2017 titled as **"Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.".** In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to "pay and recover". However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a 'gratuitous passenger' and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.*
> ***10.*** *Therefore, on the legal aspect, it is clear that in all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.*
> ***11.*** *If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and due to the injuries suffered in the accident by him, his left leg was amputated below the knee.*

> ***12.*** *Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realize the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.*
> ***13.*** *Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.*
> ***14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."***

14. Thus, in view of the finding in Para 9(a) of this judgment, the Respondent/Insurance Company in this case shall be at liberty to recover the compensation from the owner of the vehicle ***(Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors. (Supra)).***

15. **In the present case,** it has been proved that **the driver was driving the offending vehicle without a valid licence and thus the Insurance Company is not liable. But considering the helplessness of the mother and young widow of the deceased, interest of justice requires that the Insurance Company shall pay and then recover the same from the owner of vehicle, by due process of law.**

16. **The appeal being FMA 294 of 2014/FMAT 1009 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

17. No order as to costs.

18. All connected applications, if any, stand disposed of.

19. Interim order, if any, stands vacated.

20. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

21. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)