

**IN THE HIGH COURT AT CALCUTTA**

**Civil Appellate Jurisdiction**

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

**F.M.A No. – 4 of 2006**

**National Insurance Co. Ltd.**

**Vs.**

**Bonita Roy**

**+**

**C.O.T – 2149 of 2005**

**+**

**IA No.CAN 1 of 2023**

**+**

**CAN 2 of 2023**

**+**

**CAN 3 of 2023**

**Bonita Roy**

**Vs.**

**National Insurance Co. Ltd.**

**For the Appellant : Mr. Rajesh Singh Adv.**

**For the Respondent : Mr. Jayanta Banerjee Adv. In FMA 4/2006**

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**For the Appellant : Mr. Jayanta Banerjee Adv**

**For the Respondent : Mr. Mr. Rajesh Singh Adv. In COT  
2149/2006**

.....

**Judgment on : 19.01.2024**

**Subhendu Samanta, J.**

The instant appeal has been preferred against the judgment and award dated 05<sup>th</sup> November, 2004 passed by the Learned Judge, Motor Accident Claims Tribunal 4<sup>th</sup> ADJ Nadia in MAC Case No. 308 of 2001.

The brief fact of the case is that the present respondents being the claimants have preferred an application before the

Learned Tribunal u/s 166 of Motor Vehicles Act for getting compensation on the ground that their predecessor was died in a road traffic accident due to rush 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. After hearing the parties and after receiving the evidences the Learned Tribunal has awarded a sum of Rs. 18,41,000/-in favour of the claimants.

Being aggrieved and dissatisfied with the said award the Insurance Company has preferred the instant appeal.

Mr. Singh, Learned Advocate appears on behalf of the Insurance Company submits that the Learned Tribunal has committed an error in passing the impugned award. The income of the deceased was wrongly calculated and the evidence of the employer of the deceased i.e. PW 6 and PW 7 was not at all considered. He further argued that the Learned Tribunal has also failed to appreciate the fact that the deceased was also responsible for the accident. There is contributory negligence on the part of the deceased in such accident. He further argued that from the evidence on record it would reveal that the accident happened due to head on collision between a motor cycle and a lorry. The motor cycle was driven by the deceased. In respect of head on collision, the driver of the motor cycle must have the responsibility to avoid the accident. The Learned Tribunal has considered the fact but only passed

the order of contributory negligence which is 20% on behalf of the deceased; it should be 50% instead of 20%.

Mr. Singh further argued that the deceased has no driving license to drive the motor cycle on that score the victim was also responsible for the accident.

Refuting the contention of the appellant, the Learned Advocate for the respondent submits that the impugned award passed by the Learned Tribunal is not at all conformity with the observation of Hon'ble Supreme Court passed in **Pranay Sethi**. To challenge the said award the respondent also preferred one cross appeal being No. COT 2149 of 2005. He submits that the Learned Tribunal has not correctly assessed the income of the deceased. Moreover, the contributory negligence on behalf of the victim was wrongly calculated. The victim never contributed the accident. The offending vehicle was driving in a rash and negligent manner. The police case started due to accident is ended in charge sheet, wherein the IO submitted the final report stating the driver of the offending vehicle to be the accused. He further argued that the claimants are entitled to get the future prospect which is 50% to the established income of the deceased. The deceased was within the age group of 35 to 40 and he was in a permanent job as a fitter in a Merchant Navy. The occupation and the income of the deceased has been sufficiently proved by the claimants by producing sufficient document as well as the oral evidences. He further argued the claimants are entitled to get the general

damages according to the law laid down by the Hon'ble Supreme Court in **Pranay Sethi**.

Heard the Learned Advocates.

Perused the materials on record and also perused the evidences adduced before the Learned Tribunal. I have perused the observation of the Learned Tribunal in assessing the compensation.

In considering the contributory negligence on the part of the victim it appears to me that the fact of accident goes to show that there was a head on collision. At the time of the accident the victim was driving the motor cycle and PW 4 was the pillion rider. PW 4 deposed before the Learned Tribunal that at the time of accident the offending truck was riding the motor cycle in a rash and negligent manner with high speed and dashed the motor cycle. During the cross examination the credibility of PW 4 could not be shaken by the Insurance Company. One eye witness appeared before the Learned Tribunal as PW 7 who stated that he was present on the spot of accident and after hearing the large sound he rushed to the P.O.. He also deposed that the lorry was proceeding with a very high speed.

The Learned Tribunal after perusing the evidences is of opinion that there was narrow road and as there is a head on collision between the two vehicles. The victim must have contributed some portion of the accident.

In considering the entire facts of the case and evidence on record it appears to me that the observation of the Learned Tribunal is incorrect. There are no direct evidence before the Learned Tribunal that the victim was responsible for the accident, rather, the investigation of police ended in charge sheet accusing the driver of the lorry to be responsible for the accident. The prima facie evidence in the charge sheet after thorough police investigation proved that the victim was not responsible for the accident but the accident happened due to rash and negligent driving by the driver of the offending vehicle. The plea of contributory negligence of Insurance Company is turned down.

In considering the monthly income of the deceased it appears that the Learned Tribunal has considered the evidence of PW 6. In calculating the yearly income of the deceased but it appears that the Ext. 14 is the total statement wages of the victim which indicates that the gross yearly income of the deceased is Rs. 1, 65,329 less income is Rs. 7,468/- so net yearly income comes to Rs. 1, 57,861/-.

It further appears that the number of claimants are more than 03 so the deduction towards the personal expenses would be 1/4<sup>th</sup>.

The claimants are also entitled to get the future prospects to the tune of 50% upon the established salary of the deceased. The applicable multiplier is 16. Considering the age of the deceased to be within the age group 35 to 40 years.

According to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**, the claimants are also entitled to get the general damages of Rs. 70,000/-.

Considering the entire aspects the award passed by the Learned Tribunal required to be modified.

### **Calculations of Award**

|                                               |             |            |
|-----------------------------------------------|-------------|------------|
| Gross yearly income –                         | 1, 65,329   |            |
| Less Income Tax -                             | 7,468       |            |
|                                               | -----       |            |
| Net Yearly Income-                            | 1, 57,861   |            |
| Add 50% future prospect-                      | 78,930      |            |
|                                               | -----       |            |
|                                               | 2, 36,791   |            |
| Less 1/4 <sup>th</sup> for personal expenses- | 59,197      |            |
|                                               | -----       |            |
|                                               | 1, 77,594   |            |
| Multiplier 16                                 | =           | 28, 41,504 |
| Add General Damages -                         | 70,000      |            |
|                                               | -----       |            |
| Total Principal Compensation -                | 29, 11, 504 |            |
| Less Awarded by Tribunal -                    | 18, 41,000  |            |
| Enhancement -                                 | 10, 70,504  |            |

Just and proper compensation of this case to Rs.- 29,11,504/-. The Learned Tribunal has already awarded a sum

of Rs 18,41,000/-. Accordingly the balance award comes to Rs. 10,70,504/-. The Insurance Company is directed to pay the balance awarded sum together with 06% interest per annum from the date of filing of the claim application within 06 weeks from the date of passing of this award through the office of the Learned Tribunal. On such deposit the claimants are at liberty to receive the same from the office of the Learned Tribunal on usual terms.

It appears that the Insurance Company has already deposited the awarded sum before the office of the Learned tribunal. Wherefrom the claimants are allowed to withdraw Rs. 9,00,000/-. The rest amount was invested by the office of the Learned Tribunal in a fixed deposit scheme, by virtue of the order of this court dated 06.06.2005.

The Learned Tribunal is directed to allow the claimants to receive the said invested amount along with the interest.

The Insurance Company has deposited the statutory amount of Rs. 25,000/ at the time of filing of the instant appeal with the office of the Learned Registrar General High Court Calcutta. The same amount must have accrued with some interest. The Insurance Company is at liberty to receive back the same statutory amount along with the accrued interest from the office.

The payment of compensation is subject to the ascertainment of payment of deficit court fee.

The FMA 4 of 2006 along with COT 2149 of 2005 is disposed of.

Connected CAN applications if pending are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

**(Subhendu Samanta, J.)**