

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 3683 of 2015

Hajra Bibi & Anr.

versus

Bajaj Allianz General Insurance Co. Ltd. & Anr.

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

: Mr. Tathagata Banik, Advocate.

For the Respondent : Mr. Rajesh Singh, Advocate.

Hearing on : 31.01.2024

Judgment on : 01 .02.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and award dated 27th day of April, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Tamluk, Purba Medinipur in MAC Case No. 150/230 of 2011/2009.
2. The brief facts of the case is that the present appellants being the mother and married daughter of a lady (deceased) have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that the victim 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 before the learned tribunal by filing written statement.

3. After hearing the parties and after receiving the evidences the learned tribunal has dismissed the claim case. Being aggrieved by and dissatisfied with the said order of dismissal the present appeal have been preferred by the claimants.
4. Heard the learned advocates for the appellants also perused the observation of learned tribunal in the impugned judgment. It is the sole ground for rejection of the learned tribunal that the present appellants are the mother and the married daughter of the deceased (Muslim lady); married daughter and the mother are not the legal representatives of the deceased. Thus, the learned tribunal is of opinion that the claimants have no locus standi to file the instant claim case as they are not at all dependent upon the income of the deceased. On that above score, the learned tribunal dismissed the claim case as not maintainable and also not considered the other issues.
5. Learned advocate for the appellants submits that the observation of the learned tribunal is erroneous. The claimants are the sole legal representatives of the deceased and they are dependent upon the income of the deceased so they are entitled to file the claim case and also entitled to get the compensation.
6. Heard the learned advocates perused the observation of the learned tribunal, the appellant No. 1 is the mother of the deceased

appellant No. 2 is the married daughter of the deceased who was deserted by her husband and now living with the family of her mother. It is also the fact that the deceased was deserted lady and separated from her husband since more than 18 years. The PW-1 i.e. the appellant No. 1 corroborated the entire fact of her pleadings, through examination-in-chief before the learned tribunal. She also submitted the certified copy of FIR, seizure list, charge-sheet etc. i.e. police papers before the learned tribunal to prove her case.

7. In law, the estate of Mohamedan lady usually devolved upon her husband and in absence of her husband to her father, and in absence of her father, to her mother and to such other male members of her father's family how high soever as **"sharers"**. The daughter is also entitled to inherit the estate of her mother as **"residuary"**. The deceased lady was admittedly deserted by her husband for more than 18 years. The father or any male members of her father's family, are not in existence.

It appears that the claimants were residing with the victim in a family; so, they must have dependant upon the income of the deceased.

8. Thus, the present appellant No. 1 being the mother, and present appellant No. 2 being the married daughter (deserted) are the legal heirs of the deceased lady and they are entitled to get the compensation in this case. It appears that the observation of the

learned tribunal is erroneous. The claimants are entitled to get the just and proper compensation of this case.

9. The alleged accident was well proved by virtue of the evidence of the PW-2 as well as the certified copy of the FIR, charge-sheet and other police papers of Bhabanipur, P.S. Case No. 83 of 2009 dated 16.07.2009. The driver of the offending vehicle is responsible for the accident. Accordingly, the claimants are entitled to get the compensation. The income of the deceased was stated to be Rs. 4,000/- from the occupation of fish business. No such income proof documents were adduced. So in this case, the notional income of Rs. 3,000/- is considered to be the income of the deceased. Claimants are entitled to get the future prospects and general damages according to the observation of Hon'ble Apex court in **Pranay Sethi**.

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

Calculation of Compensation

i) Income	:Rs.3,000/-
ii) Annual Income (Rs.3,000 X 12)	:Rs.36,000/-
iii) Add: 40% future prospects	:Rs. 9,000/-
	:Rs.45,000/-
iv) Less: 1/3 rd deduction towards personal Exp.	:Rs. 15,000/-
	:Rs.30,000/-
v) Multiplier 15 (age 35 years) (Rs.30,000 X 15)	:Rs.4,50,000/-

vi) Add: General Damages

:Rs.30,000/-
:**Rs.4,80,000/-**

11. The just and proper compensation of this case come to Rs. 4,80,000/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application. The Insurance Company is directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim application within six weeks through the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same amount in favour of the claimants vide two equal account payee cheques on usual terms and conditions.
12. The payment of compensation is subject to the ascertainment of payment of deficit Court Fees, if any.
13. The office is directed to return the LCR immediately.
14. The learned tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.
15. The instant **FMA 3683 of 2015** is disposed of with the above observation.
16. All connected applications, if any, stand disposed of.
17. Interim orders, if any, stand vacated.
18. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

