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**IN THE HIGH COURT, CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

F.M.A. 2 of 2023

**Smt. Jayanti Burman @ Barman & Ors.
Versus
HDFC- ERGO General Insurance Company Ltd. &
Anr.**

Mr. Gobinda Saha,
Mr. Tamal Kr. Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka De. For the appellant.

Mr. Syantan Ghosh. ... for the respondent No.1.

1. This appeal has been preferred impugning the judgment and order passed by the learned Motor Accident Claim Tribunal, Jalpaiguri on 30th Day of March, 2021 in connection with Motor Accident Claim Case no. 412 of 2017 under Section 166 of the Motor Vehicle Act.
2. The background of this case is that on 07.11.2017 one Fuleswar Barman @ Burman son of Mahesh Ch. Barman died in an accident by the involvement of one truck bearing No.WB-73C/6992 at 1:00 p.m. when Fuleswar Barman @ Burman, since deceased, was going towards Shikarpur under Police Station – Mathabhanga by one E- Rickshaw. After the accident, the said Fuleswar Barman @ Burman sustained bodily injury. He was shifted to Mathabhanga Sadar Hospital, where doctor declared

him dead.

3. Legal heirs of the deceased i.e. wife and children claimed compensation to the tune of Rs.6,50,000/- (Rupees Six Lakh and Fifty Thousand Only) by filing an application under Section 166 of the Motor Vehicles Act on 05/12/2017.
4. After receiving notice, opposite parties i.e. owner of the vehicles and HDFC Ergo General Insurance Company Limited had entered appearance.
5. Opposite party no.2/HDFC ERGO General Insurance Company Limited contested the application by filing written objection denying all material allegations made in the claim application submitting in paragraph 13 (vi) that it was the clear case of composite/contributory negligence on the part of the drivers of the two vehicles and, therefore, liability should be divided among both the vehicles in equal ratio. Opposite party no.1 did not contest by filing any written objection.
6. In support of the claim petition, two witnesses viz. Himani Barman was examined as P.W. 1 and one, Tushar Karjee as P.W.2. In course of their evidence, a good number of documents were admitted in evidence including formal F.I.R., written complaints, seizure list, charge-sheet, P.M. Report, insurance policy etc. as exhibit 1 to 16.

Observations of the learned Tribunal:-

7. Learned Tribunal after recording the evidence and considering the documents admitted during evidence returned his finding that F.I.R. did not disclose any number of vehicle and during investigation of the case, police examined some witnesses and made them witnesses in the charge-sheet as well. But, none of those witnesses were examined in this case on behalf of the claimants.
8. Learned Tribunal also recorded its finding that the F.I.R. was lodged after 14 days of the alleged accident.

Analysis:-

9. After careful perusal of the evidence of P.W.1, it appears that daughter of the deceased had stated about the accident alleged in this case and death of her father in the said accident. She also stated about the lodgment of F.I.R. with the police and investigation conducted by the police. In the cross-examination she stated that the accident took place on 07/11/2017 at 1:00 p.m. in the afternoon at Shikarpur under Police Station- Mathabhanga.
10. From the cross-examination, I do not find any substantive questions put the witness to dispute the credibility of the witness.
11. P.W. 2 claiming himself to be an eye witness has stated in his Examination-in-Chief that he had witnessed the accident alleged in this case by the

involvement of the vehicle and in that accident Fuleswar Barman @ Burman had died. He has further deposed that the accident took place due to reckless and negligent driving of the driver of the truck bearing No.WB-73C/6992, who dashed one E-Rickshaw, where Fuleswar Barman @ Burman was proceeding towards Mathabhanga.

12. In cross-examination, P.W. 2 specifically stated that neither the claimants nor the said Fuleswar Barman @ Burman, since deceased, were known to him. He further deposed that at the relevant point of time, he was standing in a shop and after the accident, offending truck baring No.WB-73C/6992 spade away. He further stated that after the accident, he raised alarm and out of four persons sitting in the E-Rickshaw, three persons died. He denied the suggestion put to him in course of his cross-examination.

13. After careful scrutiny of evidence of P.W 1 and P.W.2, I do not find any reason to disbelieve their evidence tested through cross-examination.

14. One Abhijit Chakraborty, Assistant Manager (Legal) of the Insurance Company deposed in this case as D.W.1. In course of his Examination-in-Chief, he supported documents including statement recorded under Section 161 of the Code of Criminal Procedure as well as mechanical report. In his

cross-examination, he has stated that police recorded the statement of one Gobinda Burman under Section 161 of the Code of Criminal Procedure.

15. With regard to the evidence of D.W.1, learned Tribunal observed that the said Gobinda Burman, charge-sheeted witness, stated in his statement recorded under Section 161 of the Code of Criminal Procedure that he did not witness the accident.
16. In my humble opinion, the statement of Gobinda Burman does not make any difference to the merit of this case while both the witnesses adduced on behalf of the claimants substantiated the factum of accidental death of Fuleswar Barman @ Burman by the involvement of one truck baring No.WB-73C/6992 that too, the factum of accident was further ratified by the charge-sheet submitted by the Investigating Officer after the investigation of the alleged accident.
17. It is not disputed that Fuleswar Barman @ Burman died in an accident by the involvement of truck baring No.WB-73C/6992.
18. In these circumstances, I am not agreeable with the learned counsel appearing on behalf of the Insurance Company who submitted that none of the charge-sheeted witness was examined in this case and at the time of lodging of F.I.R., the number of

vehicles in this case involved in the accident was not mentioned.

19. Taking risk of repetition, I find that after the accident, F.I.R. was lodged without any delay and investigation was done by the Investigation Officer and ultimately, charge-sheet was filed against the driver of the truck, whose involvement was duly corroborated by the witness examined on behalf of the claimants.
20. On careful scrutiny of the entire evidence on record, particularly the F.I.R., charge-sheet, P.M. report, Insurance Policy, this Court finds that on the alleged date of incident, one motor accident took place by the involvement of the truck bearing No.WB-73C/6992, wherein Fuleswar Barman @ Burman died, though it was not mentioned in the F.I.R. (Exhibit 2) regarding the number of the vehicle, but during investigation, the driver of the vehicle was arrested and the said truck bearing No.WB-73C/6992 was seized under a seizure list (Exhibit 3) and charge-sheet (Exhibit 4) was submitted accordingly.
21. In the result, the order passed by the learned Tribunal in Motor Accident Claim Case no. 412 of 2017 under Section 166 of the Motor Vehicle Act stands set aside.
22. In the aforesaid view of the matter, I am of the

opinion that claimants are entitled to get compensation, as prayed for, on the basis of the notional income of Rs.6,000/- per month and after applying the multiplier in terms of the age of the deceased at the time of accident in the following manner:-

1. Monthly Income be assessed as Rs.6,000/-
2. Annual Income be assessed as Rs.72,000/-
3. Future Prospect be assessed 25% i.e. Rs.18,000/-
4. Total Income i.e. Rs.90,000/-
5. Deduction 1/4th on account of
personal living expenses Rs.67,500/-
6. Use of Multiplier as per age of 47
(Rs.67,500/- X 13) = Rs.8,77,500/-
7. General Damages including
loss of consortium, Loss
of estate and funeral expenses Rs.70,000/-
8. Total **Rs.9,47,500/-**

23. Therefore, the claimants are entitled to get the compensation to the tune of Rs.9,47,500/- along with simple interest @ 6% per annum from the date of filing of the claim application i.e. 04/12/2017.

24. Respondent No.1/Insurance company is directed to pay compensation amounting to Rs.9,47,500/- along with simple interest @ 6% per annum from the date of filing of the claim application i.e. 04/12/2017 by issuing four cheques in equal proportion before the learned Tribunal within six

weeks from date.

25. Learned Tribunal is requested to disburse the said cheques in equal proportion to the claimants on proper identification and proof.
26. With the above observation, the appeal being F.M.A. 2 of 2023 stands disposed of.
27. All pending applications, if there be any, stands disposed of.
28. Department is directed to transmit the records of the learned Tribunal along with a copy of this order immediately.
29. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)