

Item No. 24

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1157 of 2021
With
IA NO: CAN 1 of 2021

Jyotsna Pramanik and Ors.
Vs
The National Insurance Company Limited and Anr.

Mr. Amit Ranjan Roy
... for the appellants.
Mr. Deb Narayan Ray.
... for the respondent/Insurance company.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellants before this Court are the claimants in Motor Accident Claim Case under section 166 of the Motor Vehicles Act, 1988 and aggrieved by the judgement and order dated 26.03.2021 passed by the Learned Additional District Judge, Fast Track, 2nd Court Tamluk, Purba Medinipur.

The case of the appellants/claimants may be summed up thus.

On 27.08.14 at about 7.30 p.m. while the victim was standing extreme left side mud portion of Digha-Nandakumar road at Srikrishnapur more, at that time the offending vehicle being No. WB-26C/3092 (Ambassador) was coming from Bajkul side proceed towards Narghat side with very excessive speed and

when reached at Srikrishnapur more the driver of the said vehicle could not control the said vehicle which dashed, knocked and run over the victim and for which he was injured very grievously. The victim was taken to Erashal BPHC Hospital where the doctor declared him dead due to the said accidental injuries. The said accident took place due to rash and negligent driving of the driver of the offending vehicle being No. WB-26C/3092 as the said driver was driving the said vehicle endangering human life and safety. As a result of the accident the victim sustained grievous injuries. It was also contended by the appellant/claimants that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle being No. WB-26C/3092 and on the date of the accident the victim was aged about 45 years and earning of Rs.15,000/- per month as a export work of Brick Field.

Pursuant to the institution of the case, notice was issued upon the opposite parties. The respondent No.1/The National Insurance Company Limited contested the case by filing the written statement. Issues were framed and upon considering the evidence adduced by the claimants/appellants and upon hearing the parties, the learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:-

“Hence it is ORDERED

that, the MAC Case No- 31/18 Under Section 166 of the M.V. Act is allowed on contest against the Opposite Party No-2 and exparte against the OP No-1, but without any order of Cost. The Claimants do get an award of Compensation of Rs.5,10,000/- (Rupees five lacs ten thousand) from the Opposite Party No-2, along with 6% interest per annum from the date of evidence of the P.W. 1 i.e. 09.08.2019. The Opposite Party No-2 is directed to pay the award of compensation to the Claimants by way of three (03) Account Payee Cheques, one of Rs.3,10,000/- in the name of the petitioner No.1 and one cheque of Rs.1,00,000/- in the name of the petitioner No.2 and Rs.1,00,000/- in the name of the petitioner no.3, within two months from the date of passing of this Judgment through this Tribunal, failing which the Claimant’s will be at liberty to realize the said sum of money in accordance with the provisions of Law.

Let a copy of this order be supplied to the Opposite Party No-2 through the Ld Advocate on record for information and compliance.”

The appellants/claimants being aggrieved by the

judgment and order passed by the Learned Trial Judge has come up with the instant appeal. Although different grounds were taken by the appellants in this appeal but learned advocate for the appellants has confined his submission only with regard to the future prospect not taken into consideration by the learned Trial Court and the quantum of interest awarded.

Heard learned advocates for the appellants/claimants and learned advocates for the respondent No.1/The National Insurance Company Limited. Perused the materials on record.

Learned advocate for the appellants/claimants submits that the learned Trial Court erred in not taking into consideration the future prospect of the victim, which ought to have been taken. It is further submitted by the learned advocate that the learned Trial Judge erred in awarding interest from the date of evidence till the date of realisation which ought to have been granted from the date of filing of the claim case till the date of realisation. Learned advocate also submits that the award passed by the learned Trial Court should be enhanced.

Learned advocate for the respondent No.1/National Insurance Company Limited objects to the submission of the learned advocate for the appellants.

Upon perusing the evidence adduced and upon

hearing learned advocates and considering the judicial decision, this Court is of the view that the future prospect of the victim ought to have been taken into consideration. As the victim was 53 years of age the future prospect of 10% ought to have been added with the total yearly income. The total yearly income is assessed at 60,000/- and upon 1/3 deduction on the grounds of dependency it comes to Rs.40,000/-. By taking future prospect of 10% into consideration it comes to Rs.44,000/-. On Rs. 44,000/- the multiplier of 11 being applied it comes to Rs. 4,84,000/-. The General Damages to be added is 70,000/-. Thus the claimants/appellants are entitled to Rs. 5,54,000/- as total compensation.

Upon perusing the order passed by the learned Trial Court, it appears that there is no findings of the learned Court that due to delay caused by the learned advocate for the claimants, the interest is to be fixed from the date of evidence. Thus this Court is enable to accept the decision of the Learned Trial Court in awarding interest from the date of evidence of the claimants and this Court is of the view that interest ought to have been granted from the date of filing of claim case till the date of realisation.

Thus, this appeal stands disposed of. The Judgment and order dated 26.03.2021 passed by the Learned Additional District Judge, Fast Track, 2nd

Court Tamluk, Purba Medinipur in MAC Case No. 31 of 2018 is modified to the extent that the appellants/claimants are entitled to a compensation of Rs.5,54,000/-. Thus, the claimants/appellants are entitled to receive Rs.5,54,000/- as total compensation along with interest 6% per annum from the date of filing till the date of realisation.

As it is submitted by the learned advocates that the claimants/appellants have already received the award sum as directed by the learned Trial Court, the balance amount of Rs.44,000/- along with interest from the date of filing till date of evidence being 09.08.2019 be deposited before the Registrar General, High Court, Calcutta within six weeks from date. Further interest @ 6% per annum of Rs.5,10,000/- from the date of filing till date of deposition of PW-1 i.e. 09.08.2019 be deposited before the Registrar General, High Court, Calcutta within a period of six weeks from date.

The claimants/appellants are permitted to withdraw the deposit upon compliance of all necessary formalities.

With this observations and direction the appeal along with connected application stand disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)