

Item No. 02

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 292 of 2010

Smt. Snehalata Saboo, and Sushil Kumar Saboo,
since deceased, represented by their legal heirs Nitu
Birla & Anr.

Vs

National Insurance Company Limited

Mr. Pradip Kumar Roy, Sr. Adv.
Ms. Shruti Mitra.

... for the appellants.

Mr. Rajesh Singh,
Mrs. Sucharita Paul

... for the respondent/insurance company.

Learned advocates for the parties are present.

Heard learned advocates.

The original appellants before this Court were the claimants in a case under Section 166 of the Motor Vehicles Act 1988 and were aggrieved by the judgment and award dated 20.08.2009 passed by the learned Judge, 6th Bench, City Civil Court at Calcutta in M.A.C.C. Case No. 114 of 2004. The claimants being aggrieved by the judgment and award passed by the Learned Trial Court has come up with the instant appeal.

During the pendency of this appeal the original claimants/appellants died and the present appellants/claimants were impleaded in their place and stead. The case of the claimants before the

learned Trial Court may be summed up thus:-

On 02.09.2003 at about 6.30 a.m. the driver of the offending private bus of route no. 45A, drove the same through C.I.T. Road from north to south direction in a rash and negligent manner and endangering human life and safety of other and when it reached near the Kankurgachi crossing on C.I.T. Road in front of petrol pump, eastern side knocked down deceased Chirag Saboo when he was trying to get down from the first gate of the said bus. He was knocked down by the rear wheel of the bus as a result the deceased got severe injuries on his person and was admitted to Charring Cross Nurshing Home (P) Ltd. There he died after few hours.

The claimants in the said case claimed for Rs. 2,27,00,000/-. Pursuant to the institution of this claim case notice was issued upon the opposite parties. The respondent no.2/ National Insurance Company Limited contested the case by filing written statement. The issues were framed and upon considering the evidence and upon hearing the learned advocates, Learned Trial Judge was pleased to dispose of the claim application by observing and directing as follows:-

“Hence, it is,

Ordered:

That M.A.C.C No. 114 of 2004 be and the same

is hereby allowed on contest in part against the O.P. No. 2 national insurance Co. Ltd. and exparte against the rest but without any order of cost. The petitioners do get an award of compensation of Rs.1,54,500/- and after deduction of Rs.50,000/- which was already paid by the O.P. No.2 In connection with another proceeding under section 140 of the M.V. Act the O.P. No.2 national insurance Co. ltd is hereby directed to pay the aforesaid sum of Rs.1,04,500/- to the petitioners Snehalata Saboo and Sushil Kumar Saboo by issuing two separate account payee cheque of Rs.52,250/- each within two months from this date, failing which the amount shall carry interest @8% p.a. from the date of filing of this case i.e. from 23.03.2004 till final realization.

Let the cheques be handed over to the petitioners/claimants subject to payment of requisite court fees as assessed.

Let a copy of this judgement be handed over to the insurance Company free of cost at once for compliance.”

The original claimants/appellant being aggrieved by the said judgement and award has come up with the instant appeal.

Heard learned advocate for the appellants/claimants and learned advocate for the respondent No.2/ National Insurance Company

Limited. Perused the materials on record.

Learned advocate for the appellants/claimants submits that the victim was a brilliant student and was reading in class IX, at the time of accident his income as per the income return was Rs. 46,650/- but the Learned Trial Judge without considering the same has awarded compensation of Rs.1,54,500/- which is very meager. Learned advocate further submits that Learned Trial Judge did not consider the guidelines while awarding the compensation. Learned advocate further relies upon the following judicial decisions

- (i) Mrs. Helen C. Rebello & Ors Vs. Maharashtra State Road Transport reported in AIR 1988 SC 3191.
- (ii) State of Haryana and Anr Vs. Jasbir Kaur and Ors. reported in 2003 SCC (Cri) 1671.
- (iii) Resham Devi and Ors. vs. Rajesh and Ors. being FAO 2881 of 2009 before the Hon'ble High Court Punjab & Haryana at Chandigarh.
- (iv) V. mekala vs. M. Malathi & Anr. reported in (2014) 11 SCC 178.

Mr. Rajesh Singh, learned advocate for the respondent no.2/ National Insurance Company Limited submits that the Learned Trial Judge took consideration of the notional income in year 2003 when the notional income considered in Motor

Accident Claim Cases was not more than Rs.15,000/- per annum. Learned advocate further submits that the victim was aged about 13 years and the income relied by the claimants was from gifts and interest on the investment. Learned advocate further submits that the award of compensation is just and reasonable.

Learned advocate also relies upon the following judicial decisions.

- (i) Meena Devi vs. Nunu Chand Mahato @ Nemchand Mahto & Ors. reported in (2023) 1 SCC 204
- (ii) Kurvan Ansari @ Kurvan Ali @ Anr. vs. Shyam Kishore Murmu & Anr. reported (2022) 1 SCC 317
- (iii) Krishan Gopal and Anr. Vs. Lala and Ors. reported in (2014) 1 SCC 244.

Learned advocate further submits that Learned Co-ordinate Bench of this Court considering the decision of Meena Devi as awarded compensation of Rs. 5,00,000/- in the case of death of minor the case being F.M.A. No. 444 of 2025.

Upon considering the facts and circumstances and upon hearing the learned advocates, it appears from the record that the income relied upon by the claimants was from gifts and different investments. Thus, the observation

made by the Learned Trial Judge that the income of the victim was Rs.46,850/- per annum was not from personal earning cannot be disturbed. Although the minor who was a student may not contribute financially to the family but considering his role played in the family and considering the age the notional income which is decided in different judicial decisions being Rs.3000/- per month in view of this Court it should be Rs.3000/- per month.

In the instant case also considering the fact that the victim was a student in class IX the family background, the school which he was studying the notional income of Rs.3000/- is just and reasonable.

By considering the future prospect and the yearly income and the compensation on the heads of general damages the compensation would exceed Rs.5,00,000/- but considering the decisions of the Hon'ble Supreme Court in the cases relied upon, this Court is of the view it would be just and reasonable if the claimants are awarded compensation of Rs.5,00,000/-.

Hence, the appeal being **FMA 292 of 2010** stands disposed of. The judgment and award passed by the Learned Judge, 6th Bench, City Civil Court, Calcutta in M.A.C.C. Case No. 114 of 2004

dated 20.08.2009 is modified to the extent that the claimants would be entitled to compensation of Rs.5,00,000/- along with interest @6% per annum from the date of filing of the claim case till today.

The respondent no.2/National Insurance Company Limited shall deposit the awarded sum along with interest within eight weeks from the date of communication of this order.

In the event, the compensation awarded by the learned Trial Court is already paid the balance amount shall be deposited by the respondent no.2/ National Insurance Company Limited before the Registrar General, High Court Calcutta.

The appellants/substituted claimants shall be entitled to withdraw the sum deposited along with accrued interest, if any, upon compliance of all necessary formalities.

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

(Biswaroop Chowdhury, J.)