

Item No. 04

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 289 of 2024
With
IA NO: CAN 1 of 2023

National Insurance Company Limited
Vs
Jaharan Bibi & Ors.

Mr. Rajesh Singh.

... for the appellant.

Mr. Amit Ranjan Pati,
Mr. Anish Goswami.

... for the respondent nos. 1 to 4.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellant/insurance company before this Court was a opposite party in a claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 29.07.2022 passed by the Learned Additional District Judge, 4th Court, Paschim Meidinipur in MAC Case No. 126 of 2019.

The case of the claimants/respondent nos. 1, 2, 3 and 4 may be summed up thus:

On 12.07.2018 at about 9:00 AM when the victim was standing by the extreme left side of NH-6 near Bhandar Show Room under Kharagpur (Local) Police Station at that time a Dumper bearing registration No. WB-298/ 4435, which was coming

in a rash and negligent manner, dashed the victim, namely, Sk. Mohammad @Sk. Manki and another. Consequently, victim Sk. Mohammad sustained serious bleeding injuries on his head, chest and all over his person and died on spot. He was taken to Kharagpur S. D. Hospital where he was declared dead and autopsy was conducted over his dead body. The accident occurred due to rash and negligent driving of the driver of vehicle bearing No. WB-29B/4435 (Dumper).

The victim, since deceased, was a plumber. He used to earn Rs.15,000/- month. He was the only earning member of his family. On his death, the legal heirs, that is, wife, daughter, minor son and father of the deceased have brought the instant proceeding to get compensation to the tune of Rs. 12,00,000/-.

Pursuant to the filing of the claim case, notice was issued upon the opposite parties. Opposite party/ National Insurance Company Limited appeared in the claim case and filed written statement and contested the case. Issues were framed and evidence was adduced.

Upon considering the evidence and upon hearing the learned advocates, Learned Trial Court by the judgement and award dated 29th day of July, 2022 was pleased to dispose of the claim case by observing and directing as follows:

"Judgement is pronounced in open Court by reading out its operative portion which reads as under:

Hence, it is

Ordered

"that the MAC case no. 126 of 2019 be and the same is allowed on contest without cost against the O.P No. 2 National Insurance Company Limited and in ex-parte against the owner of the vehicle without costs.

Opposite Party No.- 2/ National Insurance Company Limited, the insurer of offending vehicle bearing no. WB-298/4435 is directed to pay the compensation of Rs. 22,27,000/(Twenty Two Lakh Twenty Seven Thousand only) to the claimants by account payee cheques within two months hereof with the interest as per banking rate applicable to fixed deposit from the date of filing of the application till realisation of the amount.

Out of the total amount of compensation 50,000/- towards spousal consortium shall be paid by account payee cheque to Jaharan Bibi, another 50,000/- towards filial consortium shall be paid by account payee cheque to claimant no. 4, and remaining 1,00,000/- towards parental consortium should be paid in equal share to claimant no. 2 and 3

by account payee cheques.

The cheque which will be issued in the name of Claimant No. 3 Sk. Irfan (Minor) shall be handed over to her mother/ Claimant No. 1 Jaharan Bibi. Claimant No. 1 is directed to deposit the amount payable to the minor in any nationalized bank or postal department by way of fixed deposit and must submit the documents of such term deposit in the name of the minor before this Tribunal within one month from the date of receiving the cheque and thereafter the cheque in the name of Claimant No. 1 shall be handed over to her. The fixed deposit in the name of the minor (claimant no. 3) shall continue upto the date of his attaining majority.

The copy of the judgement shall be handed over to the parties after deposit of deficit Court fee by 23.08.2022”.

The case is, thus, disposed of,

The case record be consigned to District Record Room forthwith.

The judgement is delivered on this the 29 July 2022 in open Court in Paschim Medinipur.”

The appellant/ National Insurance Company Limited being aggrieved by the judgment and award passed by the Learned Trial Court has come up with the instant appeal.

Learned advocate for the appellant/insurance

company submits that the Learned Trial Court erred in considering the monthly income of the claimant to be Rs. 15,000/- without any corroboration and without any documents. Learned advocate further draws attention to the cross-examination of PW-1, where PW-1 stated that "I have no document showing that my father was a Bike mechanic". Learned advocate submits that contrary statement of the witness creates doubt, as to whether the victim was engaged in the occupation of plumber. Learned advocate also submits that the Learned Trial Judge erred in awarding consortium of Rs.2,40,000/- and general damages to the extent of Rs.30,000/- which is contrary to the rules and judicial decisions.

Learned advocate appearing for the respondent nos. 1, 2, 3 and 4/claimant submits that although the claimants/respondents did not furnish any document with the regard to the income and profession but the Learned Trial Judge has assigned reason for accepting the findings that the victim was earning of Rs.15,000/- per month. Learned advocate also submits that the compensation awarded is just and reasonable.

Now with regard to the first issue about occupation of the victim as well as income, no document is furnished by the claimants with the regard to the occupation of the victim neither any documents is furnished with regard to the income.

However, from the pleadings in the petition, the examination in chief and the cross-examination nothing can be shaken as to the victim being a plumber. The examination in chief and the cross-examination gives the Court sufficient ground to believe the contention of the claimants that the victim was a plumber. Although in the cross-examination it is stated by the PW-1 that she has no document showing his father was a bike mechanic, but this has no relevance to the facts of the case because it is not clear as to what question was put. Now with regard to the income of the victim, it further appears that no documents were furnished with the regard to the income nor there is any corroboration. However, considering the fact that the victim had to maintain a family of four persons and considering the nature of his occupation, it cannot be said that it is impossible for a plumber to earn Rs.15,000/- per month.

The Learned Trial Judge in the judgment and award was pleased to make the following observation:

“In the body of the application u/s 166 of M.V.Act, there is specific averment that the victim since deceased used to earn Rs. 15000/- per month as plumber. During evidence, P.W.1 adduced that her father since deceased was engaged as a plumber and used to earn. Rs.15000/- P/M. There is no cogent materials to disprove such oral evidence of P.W.1. In

today's socio-economic structure it is not believable that a person without a good amount of monthly income would be able to maintain a family consisting of four heads. A plumber normally earns such amount and with the rise of price index they are also raising their charges for their work. The income of the victim is thus proved under law. He on the date of death, was earning Rs. 15,000/-P/M."

Thus, considering the facts of the case and the reason cited by the Learned Trial Judge, this Court is of the view that it would not be proper to interfere with the findings of the Learned Trial Court with regard to the monthly income of the victim. Thus, the compensation which comes with regard to the total dependency loss amounting to Rs.19,50,000/- is affirmed. However, with regard to the total consortium and general damages which is awarded, this Court is of the view that Rs.40,000/- consortium to the spouse, Rs.40,000/- consortium to the father as filial consortium and Rs.30,000/- compensation on account of funeral expenses and loss of estate should be awarded in this case.

Thus, the compensation on account of consortium and general damages comes to Rs. 1,10,000/-. Thus, the total compensation comes to Rs.20,60,000/- by arithmetical calculation. However, this Court is of the view that the total compensation of

Rs.20,00,000/- is just and reasonable.

Thus, the respondent nos. 1, 2, 3 and 4 are entitled to a compensation of Rs.20,00,000/- from the appellant/ National Insurance Company Limited along with interest @ 6% per annum from the date of filing of the claim case till today.

The National Insurance Company Limited/appellant herein shall deposit the awarded sum before the Registrar General, High Court, Calcutta along with interest @6% from the date of filing of the claim case till today within eight weeks from the of communication of this order.

In the event the amount awarded by the Learned Trial Court is already paid or deposited no further deposit be made.

The respondent nos. 1, 2, 3 and 4 will be entitled to withdraw the awarded sum along with accrued interest, if any, as observed above.

The residuary amount along with accrued interest shall be returned to the appellant/insurance company.

The Trial Court Records be send down immediately.

With the aforesaid observation, the appeal along with connected application, if any, stand disposed of.

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

undertakings.

(Biswaroop Chowdhury, J.)