Item No. 10

Ct 09

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20.04.2026

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 870 of 2012
With
IA NO: CAN 2 of 2012 (Old No. CAN 955 of 2012)

Royal Sundaram Alliance Insurance Company Limited
Vs
Rita Mahali & Ors.

Mr. Rajesh Singh.
... for the appellant.
Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy.
... for the respondents.

Learned advocates for the parties are present.

With the consent of the parties the COT 52 of 2012 be treated as on day's list.

Heard learned advocates.

The appellant before this Court was a claimant under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 08.08.2011 passed by the Learned Additional District Judge, Fast Track, 4th Court, Paschim Medinipur in M.A.C. Case No. 419 of 2009.

The case of the appellant/claimant may be summed up thus:

On 03.06.2009 at about 13.30 hours the deceased Bharati Besra and others as owner of the goods (Owners of fishes) were coming by a hired Pick-Up-Van Vide Registration No. WB-33A/6837 through N.H.60 towards Belda side with high speed, in räsh and negligent manner driven by its driver when the aforesaid reached the near Porta Pole the jurisdiction of Narayangarh P.S., Dist. Paschim Medinipur and the driver of the offending vehicle (Pick-up-Van) could not control the aforesaid offending vehicle and was capsized upon the Road and as a result the deceased Bharati Besra who was the owner of fish in the aforesaid vehicle (Pick-up-Van) sustained grievous injury on her person and she died in the Kharagpur S.D. Hospital on that day. The accident took place due to high speed, rash and negligent driving by its driver who drove the offending vehicle bearing Registration No. WB-33A/6837 (Pick-Up-Van). The deceased Bharati Besra was one of the earning member of her family and due to premature death of the deceased the entire family consisting of her minor daughters and son are facing financial stringency.

Pursuant to filing of this case notice was issued upon the opposite party insurance company and opposite party vehicle owner. The vehicle owner did not contest the case. However, opposite party/ Royal Sundaram Alliance Insurance Company Limited contested the case by filing written statement. Issues were framed and evidence was adduced.

The Learned Trial Judge by Judgment and award dated 08.08.2011 was pleased to dispose of the claim case by observing and directing as follows:

"Hence.

ordered

that the instant M.A.C. case be and the same is allowed on contest against the O.P. no.2 and ex-parte against the O.P.no.1 without any further order of cost.

The petitioners are entitled to get compensation of a sum of Rs. 4,00,000/-(four lacs) only together with simple interest @ 5% p.a. of the said sum from the date of filing of the claim application i,e on and form 13/11/09 till the date of payment.

Both the O.P.'s are jointly and/or severally liable to pay the said sum.

The O.P. no.-2 Royal Sundaram Alliance Insurance Co. Ltd is directed to pay the said sum of Rs. 4,00,000/-(four lacs) to the petitioners along with simple interest @ 5% p.a. from the date of filing of the claim application i,e on and from 13/11/09 till the date of payment by account payee cheques on prorate basis on verification of their proper identity within a period of 2 months from this date of order, in default, the petitioners will be at liberty to get the award executed along with interest @ 5% per annum from the date of default till realization of the entire amount.

The petitioner no. 1 being the legal guardian of the minor petitioners no. 2, 3 & 4 is directed to deposit the amount of minor petitioners no. 2, 3 & 4 in separate fixed deposit scheme for a period of attaining of their majority in any nationalized bank or Post Office. The petitioner no.-1 will receive his cheque after depositing the fixed deposit certificates of the minor petitioners before this Tribunal."

The appellant/ Royal Sundaram Alliance Insurance Company Limited being aggrieved by the judgment and award dated 08.08.2011 passed by the Learned Trial Court has come with the instant appeal. The respondent nos. 1, 2, 3 and 4/claimants being also aggrieved by the judgment and award passed by the Learned Trial Court have filed cross-objection

Heard learned advocate for the appellant/ Royal Sundaram Alliance Insurance Company Limited and learned advocate for the respondents/claimants. Perused the evidence adduced and materials on record.

Learned advocate for the appellant/insurance company submits that the Learned Tribunal erred in proceeding with the monthly income of Rs.5000/- although the claimants could not prove the income or occupation. Learned advocate further submits that the Learned Tribunal further erred in not observing that the victim was a gratuitous passenger and right to recovery should be ordered.

Learned advocate for the respondents/claimants submits that the Learned Tribunal erred in awarding compensation of Rs.4,00,000/-, although the compensation amount arrived at was Rs.6,49,500/-. Learned advocate further submitted that Learned Tribunal did not take into consideration the future prospect and consortium.

Upon hearing the learned advocates and considering the facts of the case, this Court is of the view that evidence of PW-1/huband of the victim clearly stated that victim was a fish vendor and such statement is reiterated in the cross-examination also. Thus, from the evidence adduced the occupation of the victim cannot be disbelieved.

Considering the occupation of the victim the Learned Trial Judge did not commit any error in proceeding on the basis of the monthly income of Rs.5000/-. However, with regard to the issue of future prospect and consortium raised by the learned advocate for the appellant this Court is of the view that the matter relates to the claim in the year 2009 and at that point of time the Learned Trial Judge had no scope to consider the decision of the Hon'ble Supreme Court as observed in the case of National Insurance Co. Ltd vs. Pranay Sethi and Ors. reported in AIR 2017 SC 5157.

However, as the Motor Accident Claim Tribunal is empowered to grant reasonable compensation the Tribunal cannot confine itself only to the claim amount prayed by the claimants when the Learned Tribunal considers an amount arrived on the basis of certain guidelines just and reasonable. Thus, the Tribunal ought not to have confined compensation to Rs.4,00,000/-. Considering the fact of the case, this Court is of the that it would be just and proper to award compensation to the claimants of Rs.7,00,000/- along with interest @6% p.a. from the date of filing of the claim case till today.

With regard to the submission of Mr. Singh, learned advocate for the insurance company that right to recovery was not granted it appears that although the plea was taken in the written statement that issue was not framed. As the issue was not framed and the vehicle owner did not contest the case it would be just and proper to grant the appellant/insurance company to hear the vehicle owner by issuing notice and thereafter if not satisfied to institute a recovery proceeding before the Learned Trial Court in accordance with law where all relevant points will be kept open.

Hence, this appeal being **FMA 870 of 2012** along with COT 52 of 2012 stands disposed of. The judgement and award passed by the Learned Additional District Judge, Fast Track 4th Court, Paschim Medinipur in M.A.C. Case No. 419 of 2009 stands modified to the extent that respondent nos. 2, 3 and 4/claimants will be entitled to compensation of Rs.7,00,000/- along with interest @ 6% p.a. from the date of filing of the claim case till today. The appellant/ Royal Sundaram Alliance Insurance Company Limited shall pay Rs.7,00,000/- along with interest @ 6% p.a. from the date of filing of the claim case till today. Such payment shall be made by making deposit before the Registrar General, High Court, Calcutta within period of eight weeks from the date of communication of this order.

In the event, the amount awarded by Learned Trial Court is already paid or deposited the balance amount be deposited within a period of eight weeks from the date of communication of this order.

The respondent nos. 2, 3 and 4 will be permitted to withdraw the compensation amount upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)