

Item 25.02.
No. 2026
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 3232 of 2015

Halivant Devi, since deceased, represented by his legal
heirs Priyanka Kumari & ors.

Vs

The Oriental Insurance Co. Ltd. & Anr.

Mr. Sanat Kumar Mullick

... for the appellants.

Ms. Sayanti Santra.

... for the respondent/insurance company.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellants before this Court were the claimants in a claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 27.03.2015 passed by the Learned Additional District Judge, 5th Fast Track Court, Alipore in MAC Case No. 146 of 2013.

The case of the claimants/appellants before the Learned Trial Court may be summed up thus:-

On 09.11.2013 at about 10.15 p.m. the victim was trying to get down from the Mini Bus bearing registration No. WB-04E/1314 which then stood at the stoppage near the crossing of S.P. Mukherjee Road and Abdul Rasal Avenue when the driver of the said bus started the bus with high speed in rash and

negligent manner and for which the victim could not control himself and fell down on the road sustained grievous injuries all over his person and succumbed to his injuries on the way of M. R. Bangur Hospital.

Pursuant to filing of the case, notice was issued to the opposite parties. Opposite party/vehicle owner did not contest the case. However, opposite party/Oriental Insurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced.

The Learned Trial Judge by the judgment and award dated 27.03.2015 was pleased to dismiss the claim case. The Learned Trial Judge while dismissing the claim case was pleased to observe as follows:

“So in view of the above noted facts and circumstances I am of the considered opinion that they have failed to prove by any satisfactory reliable corroborative oral or documentary evidence that the alleged victim Nitesh Kumar Singh was their son or that their son said Nitesh Kumar Singh died in the alleged accident dated 09.11.2013 and as such I am of the considered opinion that the petitioners have failed to prove their allegation made out in their claim petition by any satisfactory reliable corroborative oral or documentary evidence and as a result the claim petition is liable to be rejected on contest against the contesting O.P. No.2 Oriental Insurance Company Ltd

and rejected exparte against O.P. No.1

So all the issues are decided against the petitioners.”

The appellant being aggrieved by the judgment and award passed by the Learned Trial Court has come with the instant appeal.

Learned advocate for the appellants submits that in spite of the relevant documents submitted before the Learned Trial Court, the Learned Trial Court erred in dismissing the claim application and disbelieving that Suresh Singh and Nitesh Kumar Singh are one and the same person. Learned advocate draws attention to the death certificate, voter card and school final certificate of the victim Nitesh Kumar Singh, wherein it is stated that the father of Nitesh Kumar Singh is Heeralal Singh. Learned advocate also submits that considering the examination in chief and the documents, the Learned Trial Court ought to have allowed the case of the claimants and granted compensation. In terms of an earlier direction passed by a Learned Co-ordinate Bench of this Court, it appears that Heeralal Singh, the appellant no.1 has affirmed an affidavit before the Learned Executing Magistrate at Chapra stating that Nitesh Kumar Singh, Nitish Kumar Singh and Suresh was the same and one identical person and there was no separate identity. It is further stated that his son Nitesh

Kumar Singh died in a road traffic accident at Kolkata on 09.11.2013 at about 10.15 p.m. under the area of Tollyguange Police Station. Learned advocate also submits that the accident being proved and the salary certificate being proved, the appellants are entitled to compensation of Rs.12,90,000/-.

Learned advocate for the respondent/Oriental Insurance Co. Ltd. submits that the PW-1 could not state clearly the name of his son whether the name of the son Suresh Singh or Nitesh Kumar Singh. Thus, the Learned Trial Court did not commit any error with regard to dismissing the claim case. Learned advocate further submits that although PW-2 deposed with regard to the salary earned by the victim but the salary register was not produced.

Upon hearing the learned advocate and upon considering the facts of the case, this Court is of the view that as the claimants in a motor accident claim case is not required to prove the case beyond reasonable doubt the technicalities in the case should be avoided so as to fulfil the object of beneficial legislation. Upon considering the documents furnished the same being filed before the Learned Trial Court wherein it is stated that the name of the victim Nitesh Kumar Singh is Heera Lal Singh and the fact that Nitesh Kumar Singh died in the accident and that PW-1 the father of the victim stated that Nitesh Kumar

Singh died in the said accident in examination in chief mere statement in the cross-examination that his son Suresh Singh died in the said accident does not make the case of the claimants unbelievable. A person may be known in his family by one name and official name may be another and there may be some other names by which he may be called by his relatives and the local persons. Thus when a father lost his son in an accident in mental agony it is not unnatural to state in his cross-examinations the name of his son as Suresh Singh. As the appellant has filed an affidavit as directed by the Co-ordinate Bench of this Court, the case of the claimants/appellants should be accepted.

Now with regard to the evidence about accident as the deposition of PW-3 is clear with regard to the accident and the chargesheet submitted by the police authority also corroborates the case it is established that death of the victim took place due to rash and negligent driving of the driver of the offending vehicle bearing registration No. WB-04E/1314.

Now with regard to the income of the deceased, it is the claimant's case that the deceased is to earn Rs.7000/- per month, such fact is corroborated by the certificate issued by Team Lease Services Pvt. Ltd. and the employee of the said company had deposed the same. Merely the fact register is not produced does not

make the claim and the evidence of PW-2 unbelievable. Thus, the salary of the victim is considered to be Rs.7000/- per month.

In the event the salary is Rs.7000/- per month and the annual salary comes to Rs. 84,000/-. 40% future prospect should be added to the annual income comes to Rs.1,17,600/-. 50% should be added on account of personal expenses and the annual dependency loss comes to Rs. 58,800/-. The multiplier of 18 is to be applied and the total dependency loss comes to Rs. 10,58,400/-. Further the claimants/appellants are entitled to general loss and damages on account of filial consortium, funeral expenses and loss of estate which is Rs.70,000/-.

Thus, the total compensation comes Rs. 11,28,400/- by arithmetical calculation. However, this Court is of the view that the total compensation Rs.11,00,000/- is just and reasonable.

Thus, the appellants/claimants are entitled to compensation of Rs.11,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today.

The respondent/Oriental Insurance Co. Ltd. is directed to deposit the entire compensation before the Learned Registrar General, High Court, Calcutta within a period of eight weeks from the date of communication of this order.

The appellants/claimants would be entitled to withdraw the compensation amount upon compliance of necessary formalities.

The deficit court fees which is due shall be paid by the appellants/claimants within two weeks before the Trial Court.

The Trial Court Records be send back immediately.

With the aforesaid observation, the appeal stands disposed of.

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

(Biswaroop Chowdhury, J.)