18.02.2026
Sl. No. 04-05
g.b.
Court No.09

FMA 1095 of 2024
With
COT 36 of 2025

Cholamandalam MS General Insurance Co. Ltd.
-Vs-
Fulo Singha & Ors.
With
Fulo Singha & Ors.
-Vs-
Cholamandalam MS General Insurance Co. Ltd. & Anr.

Mr. Soumalya Ganguli
......For the appellant
Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
....For the Respondents

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellant before this court was an opposite party in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgement and award dated 24.01.2024 passed by Learned Additional District Judge, Fast Track 1st Court, Islampur, Uttar Dinajpur in MAC Case No. 171 of 2022.

The respondent nos. 1, 2, 3 and 4 who are claimants of the said claim case being also aggrieved by the judgement and award passed by the Learned Trial Court have filed a cross-objection.

The case of the claimants/respondent nos. 1 to 4 may be summed up thus:

On the date and time of the accident the deceased Tapash Kumar Singha was coming from Sabdhan towards Lahutara by walking left side of kachcha road. When he reached at Chengramari under Karandighi P.S at the mean time one vehicle bearing no.- WB-42AL/0264 (Scorpio) which was coming from Sabdhan towards Karandighi in a very rash and negligent manner in an abnormal speed by losing control and coming into wrong side of the road dashed back side of the deceased directly as a result he was thrown off at a considerable distance and he received severe injuries on this person. The local people then & there took the deceased at Karandighi BPHC and after treatment the doctor of the said hospital declared the deceased dead.

At the place of accident the road is straight and wide and there was no obstruction over the road at the relevant time and accident was due to rash and negligent driving with an excessive speed on the part of the driver of offending vehicle. The accident could be avoided if the driver had driven the vehicle carefully in normal speed.

The victim was a mason and help in hand of his family and as such the petitioners have lost a great financial loss and mental pain and agony and will have to suffer throughout of their lives.

Pursuant to filing of the case, notice was issued upon both the vehicle owners and the insurance company. The insurance company/opposite party contested the case by filing written statement. By a judgement and award dated 24.01.2024, the Learned Trial Jude was pleased to dispose of the claim case by observing and directing as follows:

"Hence, it is,

ORDERED

that the instant M.A.C. No. 171/2022 be and same is allowed on ex parte against OP No. 1 Idrish Ali and on contest against OP No. 2- Chola Mandalam General Insurance Go. Ltd.

The Claimants/Petitioners do get award of 14,18,600/-- (Rupees fourteen lakh eighteen thousand six hundred) only as compensation along with Simple Interest @6% per anmum from the date of filing of this claim application i.c. on and from 04.07.2022 till. realization of the award.

This order will take effect only upon making payment of the deficit court fees.

The Opposite Party to. 2 is hereby directed to pay the aforesaid amount of compensation along with the interest to the claimants by issuing four separate Nc payee cheques of Rs 3,54,650/- cach in their named within two months hereof. In default OP No.2 is liable to carry further interest @ 8% p.a.

Petitioner no.1 is directed to deposit the share of Rs.3,54,650/- in the name of petitioner nos.2 and 3 each namely, Abhishek Singha and Bisnu Singha (minor children) till *attaining their majority, in any Nationalized Bank or Post Office.*

Petitioner No. 1 is directed to deposit the additional court fees on the excess awarded amount of compensation."

The appellant/insurance company being aggrieved by the judgement and award passed by the Learned Trial Judge has come up with the instant appeal.

The respondent nos. 1, 2, 3 and 4/claimants being also aggrieved with regard to the quantum of compensation has filed a cross objection.

Learned advocate for the appellant submits that the ground of challenge of the insurance company is that consortium is granted to all the claimants of Rs.40,000/- each which is contrary to law. Learned advocate submits that the compensation should be reduced accordingly.

Learned advocate for the claimants/respondent nos. 1 to 4 disputes the submission of the learned advocate for the appellant. Learned advocate further submits that the learned Trial Judge erred in proceeding with the notional income of Rs.6,000/- and not considering the monthly income to be of Rs.9,000/-. Learned advocate relies upon a circular where masons are stated to be semi-skilled workers and the daily minimum wages as provided Rs.391/-.

Upon considering the submissions made by the learned advocates and considering the materials on record, this court is of the view that the claimant no.1 apart from examining herself has not examined any third party witness to corroborate the case of the victim working as a mason. Moreover, the particulars of the employer under whom he was working are also not furnished. No document is filed to show that the victim used to receive wages from any contractor of daily wages. From the evidence of the claimants although it can be presumed that the victim was a mason but in absence of necessary particulars it cannot be inferred as to whether the victim was engaged through out the year or part of the year and the reasonable income which could be earned by him.

Thus, the learned Trial Judge cannot be said to have committed an error in proceeding with the notional income of Rs.6,000/-.

Now with regard to the arguments made by the learned advocate for the appellant/insurance company that the consortium granted to the claimants is Rs.1,60,000/- which is excessive and contrary to law, this court is of the view that considering the decision of the Hon'ble Supreme Court in **"National Insurance Company Limited**

Vs. Pranay Sethi", the consortium can be granted to the spouse. Although in some other judicial decisions courts have awarded the filial consortium in favour of parents of an unmarried child but the parental consortium cannot be said to be justified.

In the facts and circumstances of the this case, this court is of the view that Rs.80,000/- is granted in excess with regard to the consortium. Thus, the total compensation which was awarded Rs.14,18,600/- if reduced by Rs.80,000/-, it comes to Rs.13,38,600/- by arithmetical calculation. However, in the view of this court Rs.13,50,000/- is just and reasonable compensation. Thus, the respondent nos. 1 to 4 are entitled to Rs.13,50,000/- from the appellant/insurance company along with interest @ 6 per cent per annum from the date of filing of the claim case till today.

As the compensation awarded by the learned Trial Court is already deposited by the appellant/insurance company, the respondent nos. 1 to 4 will be entitled to withdraw Rs.13,50,000/- along with interest @ 6 per cent per annum from the date of filing of the claim case till today. The balance amount, if any, shall be returned to the appellant/insurance company.

Hence, this appeal being FMA 1095 of 2024 along with COT 36 of 2025 stands disposed of.

(Biswaroop Chowdhury, J.)