

Item No. 04 & 05

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 699 of 2024

National Insurance Company Limited
Vs

Rahima Khatun Mandal & Ors.

With

COT 82 of 2024

Rahima Khatun Mandal & Ors.

Vs.

National Insurance Company Limited

Mr. Deb Narayan Roy.

... for the appellant/insurance
company in FMA 699 of 2024 and
respondent in COT 82 of 2024.

Mr. Jayanta Banerjee,
Mr. Sandip Bandhopadhyay,
Mrs. Ruxmini Basu Roy.
Mr. Argha Bhattacharjee.

... for the respondents/claimants
FMA 699 of 2024 and appellant in
COT 82 of 2024.

Learned advocates for the parties are present.

The appellant in this case was an opposite party in the claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 29.09.2023 passed by the Learned Additional District Judge, Fast Track, 1st Court, Krishnagar, Nadia in M.A.C. Case No. 226 of 2016. The claimants/respondent nos. 1 to 5 being also aggrieved by the judgment and award passed by the

Learned Trial Court has filed a cross-objection being COT 82 of 2024. The case of the claimants before the Learned Trial Court may be summed up thus:-

On the fateful day of accident 01/06/2016 at dawn while the deceased driving a truck bearing no. AP 37 TE /2115 loaded with baskets of fishes from Andhrapradesh was proceeding towards West Bengal through N.H. 16 on the way near Naharpatana Chhak, within P.S. Sahadev Khunta, Dist - Balasore, Orissa, the offending vehicle bearing no. OR 15 R/4613 Tanker running at very high and excessive speed proceeding towards the opposite direction lost control and dashed the above mentioned Truck as a result of which, the driver of the truck received greivous multiple injuries all over his body. He was taken to R.K.S. District Hospital, Balasore by ambulance and seeing his critical condition he was shifted to SSKM Hospital, Kolkata 01/06/2016. On 02.06.2016 the victim succumbed to his injuries. The accident was the result of rash and negligent driving of the above noted tanker by its driver only.

Pursuant to the filing of this case, notice was issued upon both the vehicles owners of AP37 TE/2115 truck as well as vehicle owner OR 15R/4613 as well as the insurance companies, the National Insurance Company Limited and New

India Assurance Company Limited. The National Insurance Company Limited filed the written statement and contested the case.

Learned Trial Judge upon considering the evidence adduced and upon hearing the learned advocates was pleased to dispose of the claim case by observing and directing as follows:

“Hence, it is

ORDERED

that the instant Motor Accident Claim Case under section 166 of The Motor Vehicles Act 1988 be and the same is hereby allowed on contest against O.P. no. 2 National Insurance Company Ltd.

The O.P. National Insurance Co. Ltd. is hereby directed to pay compensation of total Rs. 24,05,750/- to the claimants. O.P. No. 2 National Insurance Company Ltd. is directed to pay the afore mentioned compensation to the claimants/petitioners within sixty days from the date of this order along with interest @ 6% per annum from the date of filing of this case till the scheduled date of payment; in default, the compensation amount shall carry interest @ 7% per annum after expiry of two months from this date till realization.

The petitioners are directed to produce their

respective bank account details, cancelled cheque or attested copies of their bank passbook containing details of their account number and IFSC Code of the branch, within 30 days from the date of this award, if not furnished earlier, before this Tribunal with copy to O.P. no. 2.

The O.P. no. 2 is directed to deposit the amount payable to the petitioners as above, in their bank accounts by way of electronic fund transfer within 30 days of furnishing the details stated above in the following manner:-

Petitioner Rahima Khatun Mandal (widow) (for herself and her two minor children) - Rs. 20,00,000/-.

Petitioner Fatema Mondal (Mother)- Rs. 4,05,750/-.

O.P. No. 2 shall file a compliance report with a copy of the transaction record certified by the bank concerned with notice to the petitioners or their Ld Advocate.

If the amount is not deposited within the time period as stated above, the petitioners will be entitled to recover the same with interest @ 10% per annum from the date of award. However, if the petitioners fail to furnish the bank details within the stipulated time, they will not be entitled to get future interest till they furnish such details.

The petitioner Rahima Khatun Mandal is

directed to open two fixed deposits in a nationalized bank for her two minor children i.e. Rakesh Mandal and Rajesh Mandal in their names (covering a term till they attain majority) to the tune of Rs. 5,00,000/- each and file a compliance to that effect before this court within a month of receiving the compensation amount.

The order shall take effect after payment of deficit court fees by the petitioners. In case of non-compliance of this order, the petitioners/claimants shall be at liberty to put the order into execution.

Let copies of this order/award be given to the parties free of cost in terms of section 168(2) of M.V. Act.”

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.

The respondent no. 1 to 5/claimants being also aggrieved by the quantum of compensation awarded by the Learned Trial Court have filed cross-objecting being COT 82 of 2024.

Heard learned advocates for the appellant/National Insurance Company Limited and learned advocate for the claimants/respondent nos. 1 to 5. Perused the materials on record.

Learned advocate for the appellant/National Insurance Company Limited submits that there was contributory negligence on the part of the vehicle which was driven by the victim but the same was not taken into consideration. Learned advocate further submits that inquest report submitted by the ASI, Balasore P.S. to O.I.C. Bhowanipore P.S. Kolkata will go to show that the vehicle AP 37 TE /2115 came in contact with one Tanker being Regd. No- OR-15-4613. Learned advocate also submits that the Learned Trial Judge did not take into consideration the issue of contributory negligence. It is submitted by the learned advocate for the appellant that Learned Trial Judge erred by taking into consideration the monthly income of the victim as Ra.15,000/- per month without there being any corroborative evidence or document filed in this regard.

Learned advocate for the respondent nos. 1 to 5/claimants submits that although the National Insurance Company Limited filed written statement but no specific plea was taken regarding contributory negligence. Learned advocate further submits that no evidence was adduced by National Insurance Company Limited to prove contributory negligence. Learned advocate also submits that the Learned Trial Judge while computing the compensation in the said case erred in taking into consideration the future

prospect of 15% and not 25% as observed in the case of National Insurance Company Limited Vs. Pranay Sethi reported in AIR 2017 SC 5157.

With regard to the submission of the learned advocate for the appellant, this Court finds that there is no specific averment taken either in the cross-examination or in the written statement regarding contributory negligence of the vehicle which was driven by the victim. Further no witness was examined to prove the case of the contributory negligence.

Upon perusing the evidence of PW-2 and the chargesheet submitted by the police authority, it will go to show that the death of the victim took place due to rash and negligence driving by the driver of vehicle No. OR 15R/4613.

Now with regard to the income of the victim although the claimants did not submit any documents or did not examine the employer of the victim but considering the evidence adduced the fact that the victim was a driver by occupation and he used to drive the truck and the fact that he used to maintain his family more than five members, it is not unusual for the victim to earn Rs.15,000/- per month. The Learned Trial Judge while considering the issue of income of the victim has given sufficient reasons for taking the decision of considering the

monthly income of Rs.15,000/- per month.

Thus, this Court does not find any error with regard to the monthly income as decided by the Learned Trial Judge. Although the Learned Trial Judge upon considering the evidence adduced and the monthly income arrived at just and reasonable compensation, however, this Court is of the view that considering the decision of National Insurance Company Limited Vs. Pranay Sethi reported in AIR 2017 SC 5157 the future prospect instead of 15% should be 25%. In the event, the monthly income is considered as Rs.15,000/-, future prospect of 25% added brings the total monthly income to Rs. 18,750/-. Thus, the annual income comes to Rs.2,25,000/-. 1/4th i.e. Rs. 56,250 should be deducted on account of personal expenses and annual dependency loss comes to Rs.1,68,750/-. Considering the age of the victim the multiplier of 15 should be applied. Hence, the total dependency loss comes to Rs. 25,31,250/-. Further the claimants are entitled to Rs. 1,10,000/- on account of consortium of the spouse and filial consortium and Rs.30,000/- on account of funeral expenses and loss of estate. Thus, Rs. 1, 40,000/- should be awarded under the heading funeral expenses, loss of estate and loss of consortium. Thus, the total compensation comes by arithmetical calculation to Rs. 26,71,250/-. However,

this Court is of the view that compensation of Rs.26,00,000/- is just and reasonable.

Hence, this appeal being **FMA 699 of 2024** along with **COT 82 of 2024** stands disposed of.

The judgment and order passed the Learned Additional District Judge, Fast Track, 1st Court, Krishnagar, Nadia in M.A.C. Case No. 226 of 2016 stands modified to the extent that the respondent nos. 1 to 5 is entitled to compensation of Rs.26,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today.

The appellant/National Insurance Company Limited shall deposit Rs.26,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today within a period of eight weeks from the of communication of this order.

However, it is clarified that in the event the compensation awarded by the Learned Trial Court is already deposited or paid the balance amount of compensation shall be deposited within a period of eight weeks from the date of communication of this order.

The respondent nos. 1 to 5/claimants will be entitled to withdraw the compensation upon compliance of all necessary formalities.

The Trial Court Records be send back by Special Messenger cost to be deposited by the respondent

nos. 1 to 5 within one week.

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

(Biswaroop Chowdhury, J.)