In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

07.10.2026
Item No.54
Ali
ct. no.9

FMA 1143 of 2022

Bajalata Mahata & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mondal,
Mr. Sayantan Rakshit
…… for the appellants/claimants.

Mr. Animesh Das
….. for the respondent No.1/Insurance Co.

1. Learned Advocates for the parties are present.
2. Heard learned Advocates.
3. The appellants before this Court was claimants in a case under Section 166 of the Motor Vehicles Act, 1988, and are aggrieved by the judgment and award dated 11th January, 2022, passed by learned Additional District Judge, R.D. Court, Paschim Medinipur, in MAC Case No. 98 of 2020.
4. The case of the claimants before the learned Trial Court may be summed up thus:

"At the material time on 16.10.2019 at about 9:45 A.M. the victim was walking at NH6 Road to keep himself extreme left side of the road with a view to reach Khemasuli Bus Stand. At that time near Khemasuli Bus Stand one vehicle bearing no. WB-36A/7654 (Maruti Alto LXI) was coming with

excessive high speed, endangering human life in a rash and negligent manner and after violating traffic rules and regulations dashed the victim with great force for which victim got severe injuries all over his person and was taken to Kharagpur Sub Divisional Hospital and he died on the same day i.e. on 16.10.2019.

The accident took place solely due to rash and negligent driving of the driver of the vehicle being no. WB-36A/7654 (Maruti Alto LXI).

5. Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. However the opposite party No.2 contested the case by filing written statement. Issues were framed and evidences were adduced. Learned Trial Judge by judgment and award dated 11th January, 2022 was pleased to dispose of the claim case by observing and directing as follows:

"Hence, it is,

O R D E R E D

The instant case be and the same is allowed on contest as against O.P. No.2 The New India Assurance Co. Ltd. and ex parte against the O.P. no.1, the owner of the offending vehicle.

The O.P. No.2, in the name and style, The New India Assurance Co. Ltd. is hereby directed to issue an account payee cheques

amounting to Rs.10,78,000/- (Rs. Ten lakh seventy eight thousand only) is awarded in favour of the petitioners be divided as 50% to the petitioner No.1, 20% each to the petitioner nos. 2 and 3, being minor daughters and rest 10% be given to the mother of the deceased being petitioner no.4 (considering her other sons living), within one month from the date of this order, failing which it will be liable to pay interest @ 9% p.a. on the said amount from the date of filing of this case till the date of realization.

Petitioner no.1 is directed to keep the amount of compensation awarded to the minor petitioner nos. 2 and 3 in fixed deposit, in their names, before any Nationalized Bank till their attainment of majority."

6. The appellants/claimants being aggrieved by the judgment and award passed by the learned Trial Judge has come up with the instant appeal.

7. Heard learned Advocate for the appellants/claimants and learned Advocate for the respondent Insurance Company.

8. Perused the evidence adduced and materials on record.

9. Learned Advocate for the appellants/claimants submits that the learned Trial Judge erred in considering the monthly income of the victim to be Rs.6,000/-. It is further submitted that learned Trial Judge ought to have been considered the monthly income as Rs.8,500/-. Learned Advocate

also submits that the deduction on account of personal expenses ought to have been 1/4th instead of 1/3rd. The following judicial decision is relied upon by the learned Advocate. ***Maheshwari and Others Versus Ramachandran and Others*** reported in ***2023 (i) T.A.C. 387 (S.C.).***

10. Learned Advocate appearing for the respondent Insurance Company submits that the claimants/appellants failed to prove the income of the deceased thus the learned Trial Judge did not commit any error in considering the notional income of Rs.6,000/-. Learned Advocate further submits that the decision relied upon by the learned Advocate for the appellants is not applicable to the facts of the case. Learned Advocate also submits that when the accident took place the vegetable vendor's income can be considered as Rs.6,000/- per month.

11. Upon considering the decision relied upon by the learned Advocate it appears that the Hon'ble Supreme Court upon considering the occupation of the victim as vegetable vendor treated the notional income as Rs.8,000/- per month. The Hon'ble Supreme Court decided in the said case that the monthly income of the vegetable vendor ought to be Rs.8,000/-. However, the monthly

income of vegetable vendor may vary from area to area and from time to time.

12. Upon perusing the evidence of P.W. 1 it appears that the said witness was able to establish that the victim was a vegetable vendor as there is no cross examination denying the occupation of the victim. However, considering the number of members of the family and the nature of occupation and the place and area where victim used to do business this Court is of the view that it would be just and reasonable to consider the notional monthly income as Rs.7,000/-.

13. In the event the monthly income is Rs.7,000/- the annual income comes to Rs.84,000/-. Future prospect of 40% being added the total yearly income comes to Rs.1,17,600/-. 1/4th should be deducted on account of personal expenses i.e. Rs.29,400/- being deducted from the annual income the annual dependency loss comes to Rs.88,200/-. By applying the multiplier of 15 the total dependency loss comes to Rs.13,23,000/-. Further the claimants are entitled to Rs.84,000/- on account of loss of consortium, loss of estate and funeral expenses. Thus total compensation comes to Rs.14,07,000/- as per arithmetical calculation. However, this Court is of the view that

compensation of Rs.14,00,000/- is just and reasonable.

14. It is submitted by the learned Advocate for the claimants that Rs.10,78,000/- is already received. Thus the claimants/appellants are entitled to Rs.3,22,000/- from the respondent Insurance Company. The respondent Insurance Company shall deposit before the learned Registrar General, High Court, Calcutta Rs.3,22,000/- along with interest @ 6% per annum from the date of filing claim case till today. Such payment shall be made within ten weeks from the date of communication of this order.

15. The claimants/appellants will be entitled to withdraw the compensation amount upon compliance of necessary formalities as per the same mode and manner as directed by the learned Trial Court.

16. This appeal **FMA 1143 of 2022** stands disposed of.

17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)