

# Calcutta High Court

HON'BLE JUDGE(S): **BIBHAS RANJAN DE , J**

**KHANDEKAR AZMAL HOSSAAN**

**V.**

**NATIONAL INSURANCE COMPANY LIMITED**

FMA - 1095 of 2010, decided on 05/12/2022

**(A) Motor Vehicles Act (59 of 1988) , S.168— Compensation - Income of deceased - Claimant stated that his son(deceased) used to earn Rs.5,000/- p.m from his business of bricks andstone chips and also as labour contractor - Claimant also stated that Panchayat Pradhan had issued income certificate in favour of his son - Unfortunately, certificate was not admitted in evidence - No other document was filed in support of business of deceased at the relevant point of time - Court determined monthly income of deceased as Rs.4,000/- to assess thecompensation.**

**(Para 13)**

**(B) Motor Vehicles Act (59 of 1988) , S.166— Contributory negligence - Head on collision -Plea that accident took place in a turning point but Tribunal considered the negligence to the extent of 25% on part of deceased which was not justified - Accident took place on a typical turning point of the road and in that case both the vehicles should have taken care at the timeof crossing that turning point - Applying doctrine of "res ipsa loquitur", it would be justified to fix up responsibility of deceased upto 10%.**

**(Para 14)**

**(C) Motor Vehicles Act (59 of 1988) , S.168— Compensation - Enhancement - Annual Incomeof deceased was Rs. 48,000/- - Rs. 19,200/- awarded towards future prospects - Rs. 33,600/- deducted towards personal expenses - Multiplier of 16 applied - - Rs. 30,000/- awarded towards pecuniary Damages - 10% deducted towards contributory negligence - Award enhanced from Rs.3,00,000/- to Rs.5,10,840/- with interest @ 6% p.a.**

**(Para 15)**

## **Name of Advocates**

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Uday Sankar Chattopadhyay,santanu Maji, Ms. Snigdha Saha Ms. Trisha Rakshit for Petitioner; Parimal Kumar Pahari for Respondent.

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**1. JUDGMENT:-**This appeal is directed against the judgment and order dated 30th March, 2006 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Burdwan, in connection with MAC Case No.99 of 2005/ 600 of 2004 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge granted award of Rs.3,00,000/- as compensation to the claimants.

**2.** The claim petition arose on account of death of one Bela Khondekar alias Khondekar Khasnur Hossain of village Tajpur Police Station Memari, District - Burdwan, aged about 27 years in a motor accident on 26th September, 2004 at about 9 a.m. At the relevant point of time, the deceased was travelling by a motor cycle towards village Tajpur in connection with his business. Near Ahamadpur Bus Stand, one bus, bearing registration No. WGH-9681 coming from the wrong side, knocked him down. As a result, he sustained severe bleeding injuries and removed to Memari Hospital. He was shifted to Burdwan Hospital and

thereafter to SSKM Hospital, Kolkata where he succumbed to his injuries.

**3.** Owner of the bus did not contest the claim petition but the National Insurance Company Limited contested the case by filing written statement denying all material allegations contending, inter alia, that the claimants are not entitled to any compensation whatsoever.

**4.** To prove the case, the appellants/claimants examined as many as two witnesses, namely, Khondokar Ajmal Hossain, father of the deceased, as PW-1 who narrated all the incident and income of his son who was aged about 27 years at the relevant point of time. He claimed Rs.7,00,000/- as compensation. He specifically stated that his son was dealing in supply of bricks and stone chips and also was a labour contractor. In cross-examination, he stated that Panchayat Pradhan issued income certificate in favour of his son.

**5.** PW-2 claiming himself to be an eye-witness of the incident testified that on the relevant date and time he was going to brick clean and on the turning point of the road, a bus, bearing registration no.WGH-9681, dashed him. The deceased was known to him. He immediately shifted to Memari Hospital by van. He was also admitted and thereafter shifted to Burdwan Hospital. In cross-objection, he has stated the facts of accident, more specifically by saying that the accident took place on the "S" type turning point having its one end towards Ahamadpur and another towards Paharhati. The witness was at Ahamadpur side wherefrom he saw the accident first though the deceased was not visible. He further testified that the incident took place when the deceased took turn from Ahamadpur side to Paharhati side and the alleged offending vehicle took turn from opposite side. The witness could not say whether the deceased applied horn prior to taking turn on that road.

**6.** From the records, it appears that copy of the formal First Information Report, charge sheet, voters identity card, post-mortem report, death certificate, insurance policy and Panchayat certificate were filed.

**7.** On perusal of the evidence, learned Tribunal assessed the compensation on notional income of Rs.3,000/- and granted compensation up to 75% liability of the offending bus. In course of the judgment, learned Tribunal opined that there is also negligence on the part of the deceased driving of the motor cycle in terms of evidence adduced by PW-2.

**8.** Mr. Uday Sankar Chattopadhyay, learned advocate appearing on behalf of the appellants/claimants, has contended that at the relevant point of time, the deceased used to earn Rs.5,000/- per month from his business of bricks and stone chips and also labour contractor. He also referred to Panchayat certificate filed in the record.

**9.** Accordingly, he has submitted that income should be considered as Rs.5,000/- in the year 2004. He has further submitted that the accident took place in a turning point but learned Tribunal considered the negligence to the extent of 25% on the part of the deceased which was not justified.

**10.** Mr. Parimal Kumar Pahari, learned advocate on behalf of the respondent no.1/National Insurance Company Limited has submitted that the learned Tribunal rightly assessed the monthly income as Rs.3,000/- and considering the contributory negligence on the part of the deceased, the learned Tribunal rightly deducted 25%.

**11.** Therefore, in this appeal, two points are to be considered. One is the income of the deceased and the second is the contributory negligence on the part of the vehicles involved in the accident.

**12.** So far as the income of the deceased is concerned, PW-1, father of the deceased, has stated in his evidence that his son was dealing in bricks and stone chips and also labour contractor and used to earn Rs.5,000/- per month. PW-1 also referred to a certificate issued by the Panchayat. Unfortunately, that was not admitted in the evidence as exhibit. That apart, no other document was filed in support of the business running by the deceased at the relevant point of time. From the evidence and copy of the charge sheet, it is found that the motor cycle belonged to the deceased Bela Khondekar @ Khondekar Khasnur Hossain.

**13.** Considering all facts and circumstances, I find it necessary to determine the monthly income of the deceased as Rs.4,000/- at the relevant point of time to assess the compensation.

**14.** With regard to the contributory negligence is concerned, it is found from the evidence of PW-2 that the accident took place on a typical turning point of the road and in that case both the vehicles should have taken care at the time of crossing those typical turning point.

**15.** In the aforesaid view of the matter as well as keeping an eye to the doctrine of "res ipsa loquitur", I find it justified to fix up responsibility of the deceased not beyond 10%. Now, I modify the compensation as follows:-

|  |  |
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| Monthly Income   | Rs. 4,000/-                                  |
| Annual Income (Rs.4,000/- x 12)                        | Rs. 48,000/-                                 |
| Add: Future prospect (@ 40%)                           | Rs. 19,200/-                                 |
|  | Rs. 67,200/-                                 |
| Less: 1/2 Deduction (personal expenses)                | Rs. 33,600/-                                 |
|  | Rs. 33,600/-                                 |
| Multiplier by 16 (as per age - 32 years)               | x 16   |
|  | Rs.5,37,600/-                                |
| Add: Pecuniary Damages                                 | Rs. 30,000/-                                 |
|  | Rs.5,67,600/-                                |
| Less: Deduction of 10% towards Contributory negligence | Rs. 56,760/-                                 |
|  | Total Rs.5,10,840/-                          |
|  | Less - Awarded by Id. Tribunal Rs.3,00,000/- |
| ENHANCEMENT  | Rs.2,10,840/-                                |

**16.** For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.5,10,840/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 20 December, 2004 till the deposit of the amount.

**17.** It is reported that the appellants/claimants have already received

Rs.3,00,000/- as awarded by the learned Tribunal.

**18.** Therefore, the appellants/claimants are entitled to the balance amount of Rs.2,10,840/- along with interest @ 6% per annum from the date of filing of the claim petition, th i.e., on 20 December, 2004 till the deposit of the amount.

**19.** Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced amount of Rs.2,10,840/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 20 December, 2004 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants are entitled to withdraw the balance award amount with interest.

**20.** The learned Registrar General is requested to disburse the amount to the appellants/claimants in equal share on proper identification.

**21.** With the above observation, the appeal, being FMA 1095 of 2010, stands disposed of.

**22.** All pending applications, if there be any, stand disposed of.

**23.** Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

**24.** Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**Petition Allowed**