

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No. 69 of 2022

Smti. Jyoti Rani Nandi

.....Appellant(s)

VERSUS

Sri Indrajit Goswami & 2 Others

.....Respondent(s)

For Appellant(s)	:	Mr. D. K. Daschoudhury, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Advocate.
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

08/08/2023

Heard Mr. D. K. Daschoudhury, learned counsel appearing for the appellants also heard Mr. B. Majumder, learned counsel appearing for the respondents.

[2] The present appeal has been filed under Section-173(1) of the Motor Vehicles Act, 1988 against the judgment and award dated 30.03.2022 passed in connection with T.S. (MAC) 28 of 2018 by the learned Member, MAC Tribunal No.2, Gomati Judicial District, Udaipur for enhancement of the amount of compensation.

[3] The facts of the claimant-petitioner's, the appellant, case as it depicts from the claim petition, in brief are that on the fateful day of accident i.e. on 14.01.2017 at around 19:30 hours while the son of claimant-petitioner namely Bapi Nandi was proceeding towards Tepania Choumuhani from the head of Tepania road by walking on way after reaching in front of Tepania Block Office, suddenly one motor bike bearing registration No. TR-03F-7497 (TVS Jupiter) after coming in abnormal high speed with rash and negligent manner dashed upon him from backside. As a result said Bapi Nandi received fatal injuries on his head, chest and other vital parts of his body. Soon after the accident the injured was taken to Gomati District Hospital, Tepania but considering his alarming condition he was referred to GB Hospital, Agartala. During treatment on 15.01.2017 injured succumbed to his injuries at GB Hospital, Agartala.

[4] On 17.01.2017 an ejahar was lodged by one Dulal Nandi with the R.K. Pur PS which was registered vide R.K. Pur PS Case No. 06 of 2017 dated 17.01.2017 under sections 279/304(part II) of IPC and under sections 177/184 of the M.V. Act.

[5] Deceased Bapi Nandi was a young, energetic, stout healthy unmarried boy of 34 years of age and earning Rs. 20,000/- per month as a driver attached with Railway Dept. It is also alleged by the claimant-petitioner that the accident occurred due to rash and negligent driving by the driver of the offending motor bike bearing registration No. TR-03F-7497 (TVS Jupiter).

[6] The Oriental Insurance Company Limited, the insurer of the motor bike bearing registration No. TR-03F-7497 (TVS Jupiter) in their written statement denied the age, occupation and monthly income of the deceased as well as the facts of accident and further stated that in case of violation of any terms and condition of the insurance policy they would not be responsible to indemnify the owner. According to the insurance company they were not aware of any criminal case registered concerning the alleged accident. It is further stated by the insurance company that the owner and the rider of the offending motorbike did not inform them anything about the alleged accident, as such, they are not liable to pay any compensation until and unless it is proved that the person at the wheel was having valid and effective driving licence to drive such vehicle and it was roadworthy to ply. Under the above fact and circumstances, the insurance company prays for dismissal of the claim petition with cost.

[7] The learned counsel below after hearing the parties and having gone through the material evidence on record has observed as under:

“14. In the result, it is hereby ordered that the claimant petitioner is entitled to get compensation of Rs.10,75,200/- + 15,000/- + 40,000/- + 15,000/- = Rs.11,45,200/- (Rupees eleven lacs forty five thousand two hundred) only. The OP No.3 i.e. Oriental Insurance Company Ltd., the insurer of the offending motorbike bearing Registration No. TR-03F-7497 (TVS Jupiter) is directed to make the payment of compensation to the claimant- petitioner within 30 (thirty) days from today along with interest thereon @ 6% per annum from the date of filing of claim petition, i.e., from 20.04.2018 till payment/realization of the same.

15. Out of the said amount the claimant-petitioner be paid Rs.5,00,000/- and the rest amount of Rs.6,45,200/- should be kept in fixed deposit in her respective account in any Nationalized Bank for the period of 5(five) years. In the case in which investment in long term in the nature of fixed de-posit is

made on condition that the Bank will not permit any loan or advance on the Fixed Deposit and interest on the amount invested is paid monthly directly to the claimant or his legal heir, as the case may be. Further the claimant-petitioner is also granted liberty to apply for withdrawal in case of an emergency. To facilitate the payment of amount of the claimant-petitioner and the fixed deposit amount on maturity, the claimant-petitioner at the appropriate time shall file photo copy of their Bank Pass Book in his name containing photograph, account number, IFSC number and the RTGS number duly certified by the Banker and a copy of Passport Size photograph before making payment so as to enable this Tribunal to transfer the amounts directly to his Bank Account.”

[8] Being aggrieved by and dissatisfied with the said observation, the present appeal has been preferred by the appellant before this Court for enhancement of the awarded compensation.

[9] Mr. D. K. Daschoudhyr, learned counsel appearing for the appellant has submitted that the learned tribunal in determining the income of the victim arbitrarily fixed at Rs.8,000/- per month ignoring the income certificate, Exbt.6 furnished by the claimant-petitioner. According to the said certificate monthly income of the victim was Rs.16,000/-. The income certificate of the victim was issued by the Sub-Divisional Magistrate, Udaipur in exercise of his authority given by the government of Tripura after making necessary inquiry through its official agency. Learned tribunal committed serious mistake ignoring the said document making observation in his findings that no income certificate has been furnished by the claimant. There is no reasonable ground to ignore the said document by the learned tribunal and thus, the finding of the learned Court below needs to be interfered with.

[10] It has been further contended that the tribunal below awarded nothing towards medical expenses incurred for medical treatment of the victim at Gomati District Hospital and GB Hospital, Agartala and for transportation. An amount of Rs.50,000/- was spent for medicine and transportation and engaging attendance for the victim which has totally been ignored by the Court below. Further, the learned Court awarded nothing towards future prospect of the victim who died at the age of 34 years. Thus, the total amount of compensation for loss of income ought to have increased by 50% on account of future prospect.

[11] Learned Counsel appearing for the insurance company submits that the claim of the claimant-petitioners is very excessive considering the age of the deceased who was 34th years old at the time of accident. Learned counsel further

argued that the interest rate over the awarded amount, if any, may be fixed at an existing rate and such amount may be allowed from the date of filing of the claim petition instead of the date of accident.

[12] Mr. B. Majumder, learned counsel appearing for the insurance company has vehemently opposed for enhancement seeking that Exbt.6 which is the income certificate submitted by the SDM showing that the income of the victim is under the category of business but not under the category of salary when the deceased person according to the claimant mother that he is a driver by profession and is not a business man. This Court has heard the argument of Mr. Majumder and rejected the same since, the defence was not taken by the insurance company before the Court below also the said Exbt.6 has not been dealt with by the learned Court below.

[13] In view of the same, this Court takes the Exbt.6 into the consideration and accordingly, the income is derived @Rs.16,000/- as determined by the SDM and following the principle laid down in Pranay Sethi, 40% since the age of the victim is between 31 to 33, multiplier 16 is accepted and insofar as the future prospect and is a bachelor 50% would be deducted and the medical bill is Rs.3,000/-.

[14] The learned Court below has observed that the appellant has not produced any income proof document, but Exbt.6 issued by the SDM, it reveals that the monthly income of the deceased was Rs. 16,000/- which has not been considered by the Court below which needs to be considered. Thus, the monthly income of deceased is Rs.16,000/- per month and per annum income comes to the tune of Rs.1,92,000/-. The Hon'ble Supreme Court in National Insurance Company Limited vrs. Pranay Sethi & others, AIR 2017 SC 5157 in sub-Para (iv) of Para-61 held that *"In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

[15] With regard to the addition of income for future prospects, this Court in Reshma Kumari (supra) adverted to Para 24 of the Sarla Verma's case and held:-

"39. The standardisation of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self- employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases." The aforesaid analysis vividly expositis that standardization of addition to income for future prospects is helpful in achieving certainty in arriving at appropriate compensation. Thus, the larger Bench has concurred with the view expressed by Sarla Verma (supra) as per the determination of future income."

[16] In the present case the deceased was between the age of 31 to 33 years old. So, the income of deceased towards future prospects would be 50% instead of 40% as assessed by the Court below. Hence, the total income of deceased is around Rs.1,92,000/- ($\text{Rs.1, 92,000} \times 50\% = \text{Rs.96,000} + \text{Rs.1,92,000} = \text{Rs.2,88,000/-}$).

[17] Following the multiplication table laid down by the Hon'ble Supreme Court in *Smti. Sarla Verma & ors v Delhi Transport Corporation & another, (2009) 6 SCC 121* in Para No. 21 the multiplier would be 16 since the deceased was between the age of 31-33 years at the time of accident. Therefore, the total loss of dependency would be Rs. Rs.2,88,000/- $\times 16 = \text{Rs.46,08,000/-}$. In the present case the deceased was a bachelor as such the deduction on account of personal and living expenses of the deceased should be 50%. Therefore, after deduction total contribution to the family (dependents) is determined as of Rs.23,04,000/- ($\text{Rs.46,08,000/-} \times 1/2 = \text{Rs.23,04,000/-}$). The learned Court below in addition to the awarded amount has awarded Rs.15,000/- under the head of loss of estate, Rs.40,000/- under the head of loss of consortium and Rs.15,000/- towards funeral expenses. Thus, the total award would be $\text{Rs.23,04,000} + 15,000 + 40,000 + 15,000 = \text{Rs.23,74,000/-}$.

[18] Hence, this Court is of the considered view that the order passed by the learned tribunal needs to be interfered with and accordingly, the same is ordered. After deducting the amount of Rs.11,45,200/- as already awarded by the Court below from the amount as assessed by this Court, rest of the amount be paid to the appellant by the insurance company within a period of one month from today. Since it is a beneficial legislation, it is settled principle of law and the Apex Court in number of matters held that the awarded amount need not be restricted to the amount i.e. claimed by the claimant, it can vary depending on the facts and circumstances of the case either reducing the claim or increasing the claim. With the above, observations and modifications, the present appeal filed by the appellant stands allowed and disposed of. Draw the award accordingly and thereafter, LCRs be sent back. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

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