IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE RABINDRANATH SAMANTA

FMA 492 of 2020
With
CAN 5266 of 2017

1. **Smt. Shipra Bramha**
2. **Sneha Bramha**
3. **Neha Bramha**

....Appellants/Claimants

Vs

1. ***The New India Assurance Company Limited***
2. ***M/s. Neeta Tours and Travels***

..... Respondents

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Mr. Goutam Thakur, Adv.
Ms. Anandamayi Ghosh, Adv.

..... for the Appellants

Mr. Rajesh Singh,Adv.

..... for the Respondent No. 1, New India Assurance Company Limited

Heard On : 05.07.2022

Judgment on : 22.07.2022

Rabindranath Samanta, J:-

1. This appeal is against the judgment and award dated 14th February, 2017 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 2nd Court, Raiganj, Uttar Dinajpur in MAC Case No. 60 of 2011. By the judgment the learned Tribunal directed the Insurance Company to pay a sum of

Rs.18,22,740/- as compensation to the claimants out of which 80% would be payable to the claimant Nos. 2 and 3 namely Sneha Bramha and Neha Bramha and 20% would be payable to the claimant No.1 Smt. Shipra Bramha.

2. Feeling dissatisfied with the impugned award the appellants have come up with the instant appeal seeking enhancement of the compensation.

3. Before I proceed to pen the judgment it will be apposite to note that the claimant Nos. 2 and 3 namely Sneha Bramha and Neha Bramha who were minors at the time of filing the claim application have now attained majority. Their attainment of majority be recorded in the memorandum of appeal and any other relevant paper, if any. Henceforth they will be treated as major so far as this appeal is concerned.

4. The facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act may be summarised as under:

On 29.12.2010 at about 10:00 P.M. Rupak Bramha, son of Shyamal Bramha of Village Debinagar, P.S- Raiganj, District – Uttar Dinajpur along with his relatives were going to Goa from Mumbai as the passengers of a vehicle (Bus) bearing No. MH-04G/8686. On the way to Goa they had a brief halt for Dinner at Hotel Sai Darbar by the side of N.H. Road at Wadkhal Naka, P.S- Wadkhal, District – Raigod. After having dinner they at about 1:40 A.M. were standing behind the said vehicle at a considerable distance. At that time the driver of the Bus proceeded on reverse motion with excessive speed rashly and negligently without giving any signal or blowing horn. As a result, the vehicle dashed Rupak Bramha from backside. He fell down and left wheel of the bus ran over his right mid thigh and right wrist. As a consequence thereof he sustained severe injuries on his person. Thereafter, he was shifted to MGM Hospital Navi Mumbai for treatment. Ultimately, on 30.12.2010 at about 3:40 A.M. he succumbed to the injuries.

5. The claimants allege that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim lost his life because of the accident.
6. The victim died at the age of 34 years. He used to carry on business of Brick filed, tractor, generator etc,. He used to earn Rs. 25,392/- per month.
7. On the allegations of rash and negligent driving on the part of the driver of the offending vehicle, one Wadkhal PS Case No. 90 of 2010 dated 30.12.2010 under Sections 304A/279/238 of Indian Penal Code and under Section 184 of the Motor Vehicles Act was registered for investigation against the driver. At the time of the accident the offending vehicle was insured with the New India Assurance Company Limited.
8. It may be noted that after the untimely death of the victim, his wife Tanushree Bramha out of mental shock and agonies died on 5^{th} March, 2011.
9. The claimant no.1 Smt. Shipra Bramha is the mother of the victim and the claimant Nos. 2 and 3 Sneha Bramha and Neha Bramha are the daughters of him.
10. Owing to death of the victim, who was the only earning member of his family, the claimants have fallen in acute financial distress.
11. On the facts as above, the claimants sought for compensation of Rs.40,00,000/- plus interest thereon.
12. The respondent No.1, the New India Assurance Company Limited contested the claim case by filing a written statement wherein it denied the averments/allegations as made in the claim application. It has been averred in the written statement that the victim was responsible for the accident. The respondent No.1 submits that the

Insurance Company is not liable to pay any compensation on the death of the victim either wholly or partly. On such grounds, the respondent No.1 sought for dismissal of the claim application.

13. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:

    i) Is the claim case maintainable?

    ii) Is the claim case bad for non-joinder of necessary parties?

    iii) Whether the driver of the vehicle No. MH-04G/8686(Luxury Bus) drove the vehicle in rash and negligent manner?

    iv) Whether there was contributory negligence on the part of the deceased Rupak Bramha?

    v) Whether the driver of the Bus had valid DL at the relevant time of accident?

    vi) Whether there is any violation of the terms of the policy?

    vii) Are the claimants entitled compensation as prayed for? If so, to what extent and from whom?

    viii) To what other relief/reliefs, are the petitioners entitled?

14. To establish their case the claimants examined as many as four witnesses. Some documents upon which the claimants placed reliance have been marked as Exhibited documents.

15. Upon hearing the learned advocates appearing for the parties and on consideration of oral and documentary evidence, the learned Tribunal partly allowed the claim case and awarded the compensation as indicated above.

16. On assessment of the evidence of eye-witness Sudip Kumar Saha (P.W.2) and eye-witness Amitava @ Ajitava Bhattacharya (P.W.3) and on consideration of the charge-sheet submitted against the driver of the offending vehicle the learned Tribunal has recorded the finding that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim Rupak Bramha breathe his last because of the accident.

17. It appears from the evidence of P.W. 1 Smt. Shipra Bramha, the mother of the victim that her son Rupak along with his friends Sudip Kumar Saha, Arup Biswas and Amitava Bhattacharya were going to Goa from Mumbai as a passengers of a bus bearing No. MH-04G/8686 and on the way to Goa they had a brief halt for dinner. After the dinner was over, her son stood behind the offending bus and at that time the driver of the bus without giving any signal or blowing horn suddenly proceeded on reverse motion with excessive speed rashly and negligently and the vehicle dashed her son from his back side. As a result, he sustained injuries on his person and succumbed to the injuries. Sudip Kumar Saha and Amitava Bhattacharya have been examined as P.Ws 2 and 3. These two witnesses have testified that they along with Rupak Bramha were going to Goa from Mumbai as a passenger of the offending bus on 29.12.2010 in night. On the way to Goa they had a brief halt for dinner at Hotel Sai Darbar by the side of National Highway at Wadkhal Naka. At about 1:40 A.M. while they were standing behind the bus, at that time the driver of the bus without giving any signal or blowing horn proceeded reverse motion with excessive speed rashly and negligently. In consequence thereof, the vehicle dashed Rupak Bramha from his back side and he fell down. He sustained injuries on his person and ultimately he succumbed to the injuries at MGM Hospital at about 3:40 A.M. On analysing the evidence of P.W. 2 and 3 and on consideration of the charge-sheet filed against the driver of the offending vehicle and since the Insurance Company has not preferred any appeal or cross-objection challenging the findings recorded by the learned Tribunal I concur with the findings of the Tribunal that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place and the victim Rupak Bramha lost his life because of the accident.

18. As held by the learned Tribunal and what I find from the certificate issued by the West Bengal Board of Secondary Education on record, the victim Rupak Bramha who was born on 26th March,1976 died at the age of 34 years.

19. Admittedly, the offending vehicle at the time of the accident was insured with the New India Assurance Company Limited. It appears from the judgment of the learned Tribunal that the learned Tribunal placing reliance on the Income Tax Return submitted by the victim during the year 2008-09 has held that the yearly income of the deceased after deduction of Tax was Rs. 1,70,450/- and his monthly income was Rs.14,204/-. In such context, Mr. Goutam Thakur, learned lawyer appearing for the appellant submits that the deceased Rupak Bramha submitted Income Tax Return for the year 2009-10 and from the return it will be evident that his yearly income was Rs.2,95,630/- after deduction of Income Tax. Learned lawyer submits that the claimants made prayer before the learned Tribunal to consider this Income Tax Return and to modify the award passed by it. But, the learned Tribunal rejected the prayer of the claimants. Learned lawyer submits that in exercise of power under Order 41 Rule 27 of the Code of Civil Procedure this Court may direct that the Income Tax Return submitted by the victim for the assessment year 2009-10 be admitted in evidence.

20. What transpires from the case records, the claimants made an application under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure seeking modification of the award on review by taking into consideration of the Income Tax Return of the deceased for the assessment year 2009-10. But, the learned Tribunal rejected the review application made by the claimants.

21. Learned Lawyer for the claimants argues that as the Income Tax Return is a public document, the learned Tribunal ought to have admitted the Income Tax Return in evidence. In support of his

contention learned lawyer has cited a decision dated 14.02.2020 rendered by a Single Bench of Telangana High Court in Civil Revision Petition Nos. 3087 & 3133 of 2019. At paragraph 9 of the decision the learned Single Bench of the Hon'ble Telangana High Court has held that Income Tax Returns are public documents and they can be summoned by the Court. Mr. Rajesh Singh, learned lawyer for the Insurance Company by citing a decision dated 01.08.2007 rendered by a Division Bench of this High Court in FMA No. 108 of 2006 (Minara Begum and Ors.-Vs- National Insurance Company Limited and Ors.) submits that this Hon'ble Court has held that if Income Tax Officer is not called upon to prove the authenticity of Income Tax return, copy of the Income Tax return filed by the party cannot be relied upon.

22. Perusal of the case records shows that the claimants filed Income Tax Returns in original for the financial years 2007-08 and 2008-09. But, they filed a photocopy of the Income Tax Return for the assessment year 2009-10. In such factual aspect and in view of the decision of the Division Bench of this Court in FMA No. 108 of 2006 (Minara Begum and Ors.-Vs- National Insurance Company Limited and Ors.) , I hold that the learned Tribunal rightly refused to admit the photocopy of the Income Tax Return for the year 2009-10 in evidence sans its proper proof.

23. Be that as it may, since the claimants raised the point as above by way of review under Order 47 Rule 1 and the prayer of them was rejected by the learned Tribunal, the claimants are now estopped from raising this point in the appeal on hand in view of the rigour under Order 47 Rule 7 of the Code of Civil Procedure.

24. The yearly income of the victim, as held above, was Rs.1,70,450/- prior to his death. As stated above the victim died at the age of 34 years. The Hon'ble Apex Court in the decision in the case of ***Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors*** reported

in ***(2009) 6 SCC 121*** has held at paragraph 42 that multiplier 16 for the age groups of 31 to 35 will be applied to calculate the loss of dependency. That being so, the learned tribunal rightly applied the multiplier 16.

25. But, the judgment of the learned Tribunal shows that the learned Tribunal did not consider the future prospects of the deceased and on this count he has not assessed any compensation.

26. As the nature of the business carried on by the deceased demonstrates, he was self-employed. The Hon'ble Apex Court in the decision in the case of ***National Insurance Company Limited –Vs-Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680*** has held at paragraph 59.4 that in case the deceased was self-employed or had 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. Therefore, as directed by the Hon'ble Apex Court, an addition of 40% on the income of the deceased should be added on the count of future prospects. The learned Tribunal has observed in its judgment that the claimants are entitled to Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, loss of love and affection.

27. Admittedly, at the time of the death of the deceased, the wife of the deceased was alive and she died a few months after his death. The Hon'ble Apex Court at paragraph 59.8 of the decision in ***Pranay Sethi*** (supra) has held that reasonable figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The present claimants are entitled to get Rs.15,000/- on the count of loss of estate and Rs.15,000/- on the count of funeral expenses. The widow of the deceased was entitled to Rs.40,000/- as spousal consortium on the demise of her beloved one. However, there is no demur on the part of the claimants that if Rs.40,000/- on the count of

consortium as was admissible to the widow of the deceased is equally distributed amongst the claimants.

28. The learned Tribunal in the award has directed that the claimants are entitled to interest at the rate of 4% per annum on the awarded amount of money from the date of filing of the claim application till realisation of the awarded amount.

29. As held in the decision in ***Sarla Verma*** and in a catena of decisions/orders of this Court, if the Court directs that the awarded amount of money would carry interest at the rate of 6% per annum from the date of filing of the claim application, it will meet the interest of justice.

30. It is evidenced from the evidence on record that the deceased at the time of his death left four dependents who are his mother, widow and two minor daughters. The Hon'ble Apex Court in the decision in ***Sarla Verma*** (supra) has mandated at paragraph 30 of the judgment that deduction to the extent of $1/4^{th}$ will be made where the number of dependent family members is four to six. Therefore, there will be deduction to the extent of $1/4^{th}$ instead of $1/3^{rd}$ as directed by the learned Tribunal.

31. In view of the findings as recorded above, the award passed by the learned Tribunal needs modification in the following manner:

Yearly Income =	Rs. 1,70,450/-
Future Prospect @ 40%=	Rs. 68,180/-
Total =	Rs. 2,38,630/-
Deduction to the extent of $1/4^{th}$ =	Rs. 59,657/-

Adopting multiplier 16 considering = the age of the victim of 34 years (Rs.1,78,973 x 16)	Rs. 28,63,568/-
General Damages on conventional = heads, Loss of Estate, Loss of Consortium and Funeral Expenses (Rs.15,000+Rs.40,000+Rs.15,000)	Rs. 70,000/-
Total Compensation= (Rs.28,63,568+Rs.70,000)	Rs. 29,33,568/-

32. As it appears from the case records, the claimants together have already received an amount of Rs.22,47,980/-.
33. Therefore, the claimants are now entitled to get Rs. 6,85,588/-.
34. In view of the above, the appeal merits success in part and accordingly it is allowed in part on contest against the respondent No.1 and ex parte against the respondent No.2.
35. The respondent no.1, The New India Assurance Company Limited is directed to pay a further amount of Rs.6,85,588/- and 6% interest thereon from the date of filing of the claim application on 20.04.2011. The Insurance Company is directed to pay interest at the rate of 6% per annum on the awarded amount as directed by the learned Tribunal from the date of filing of the claim application till the amount was deposited by the Insurance Company with the learned Tribunal.
36. The Insurance Company is directed to deposit the aforesaid amount of money by cheque with the learned Registrar General, High Court, Calcutta within five weeks from date. After such amount of money is

deposited the learned Registrar General, shall release the amount to the claimants in equal share as expeditiously as possible.

37. Accordingly, the appeal and the connected application stand disposed of.
38. No order as to costs.
39. Send down the LCR along with a copy of this judgment to the learned Court below for information.
40. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)