15-07-2022
Item no.17
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.350 of 2011
Rousan Bibi @ Bewa
-vs-
Oriental Insurance Company Ltd. & Anr.
With
CAN No.1 of 2011
(Old CAN No.3674 of 2011)

Mr. Krishanu Banik ...for the appellant

Mr. Rajesh Singh ...for the insurance company

Feeling dissatisfied with the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 2nd Court, Malda in MACC No.211 of 1997, the claimant has preferred the instant appeal. By the judgment dated January 28, 2010, the learned tribunal directed the first respondent, the Oriental Insurance Company Limited, to pay a sum of Rs.1,34,500/- to the appellant/claimant. This amount of compensation includes Rs.50,000/- which was paid to the appellant under section 140 of the Motor Vehicles Act, 1988.

The appellant Rousan Bibi and her husband Sk. Samijuddin jointly brought the aforesaid claim case under section 166 of the Motor Vehicles Act, 1988 against the insurance company and the owner of the offending vehicle.

The facts emanating from the claim application may be summarised as follows:

On June 3, 1997 at about 4 p.m. while Sk. Hannan aged about 20 years and Sk. Sabir Hossain aged about 15 years, both sons of Sk. Samijuddin of village Noorpur-

Dallutola, P.S. Manick Chak, District Malda were proceeding to take a bath in the river Kalindi on a bicycle along Manickchak State Highway, then, a bus named Arjun-Munni bearing registration No.WB65/0625 coming from the side of Malda Town with excessive speed and driven in rash and negligent manner dashed Sk. Hannan and Sk. Sabir Hossain and fled away towards Ratua. As a result of the accident, both the two brothers sustained severe injuries on their person and they died on the spot. The claimants alleged that due to rash and negligent driving on the part of the offending bus the accident took place and their sons lost their lives.

On the allegations of rash and negligent driving on the part of the aforesaid offending vehicle, one Manickchak P.S. Case No.33 of 1997 dated June 3, 1997 under sections 297/427/304A of Indian Penal Code was registered for investigation.

Sk. Hannan, one of the sons of the claimants died at the age of 20 years. It may be noted that the aforesaid claim application was brought in respect of the death of Sk. Hannan.

Sk. Hannan was a labourer and he used to earn Rs.2,000 per month. At the time of the accident the aforesaid offending vehicle was insured with the first respondent, Oriental Insurance Company Limited.

Because of the death of the sons of the claimants, the claimants fell in immense mental and financial distress. Under the facts and as above, the claimants sought for compensation.

The insurance company by filing a written statement contested the claim case wherein it denied the averments /allegations as made in the claim application.

Upon hearing learned advocates for the parties and on consideration of the pleadings of the parties and the evidence on record, the learned Tribunal passed the award as indicated above.

It appears from the award that the learned tribunal awarded the compensation as above only to the mother of the deceased. The appellant-claimant herein is the mother of the deceased Sk. Hannan.

Learned Counsel appearing for the appellant submits that the Tribunal erred in recording the finding that the deceased used to earn Rs.15,000/- per annum. According to him, learned Tribunal erroneously adopted the multiplier as 13, instead of multiplier 18. Learned Counsel submits that the learned Tribunal did not consider that the claimant was entitled to additional compensation on the count of future prospects at the rate of 40 per cent. Though it goes against the interest of his client, the learned Counsel fairly submits that the deduction should be to the extent of $1/2^{nd}$ instead of $1/3^{rd}$ as determined by the learned Tribunal. On such score, learned counsel submits that the compensation as awarded by the learned Tribunal should be enhanced on modification of the award.

Learned Counsel appearing for the Insurance Company submits that he opposes the plea as raised by the learned Counsel appearing for the appellant.

What I find from the judgement of the learned

Tribunal, the learned Tribunal on assessment of the evidence on record has arrived at the inference that due to rash and negligent driving on the part of the offending vehicle, the accident took place and the victim Sk. Hannan, lost his life because of the accident. On analysing the evidence on record, I find no reason to depart from the findings as recorded by the learned Tribunal in this regard. Since no appeal or cross-objection has been filed on the part of the Insurance Company, I think that the inference as arrived at by the learned Tribunal does not warrant any interference by this Court.

Therefore, I concur with the finding of the learned Tribunal that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place. Admittedly, at the time of the accident the offending vehicle was insured with the Oriental Insurance Company Limited, the respondent No.1 herein.

It is not in dispute that at the time of the accident the victim was aged about 20 years. Learned Tribunal has held that the yearly income of the victim was Rs.15,000. But in view of a series of decisions of this court, I think that the claim of the claimants that the deceased used to earn Rs.2000 per month can safely be held as justified.

Therefore, it is held that the claimant used to earn Rs.2000 per month.

As held by the apex court at para.42 of the decision in the case of ***Sarla Verma vs. Delhi Transport Corporation & Anr. reported in (2009) 6 SCC 121*** multiplier 18 will be applied in case of the deceased died in the age groups of 15-20 and 21-25 years. Therefore, the learned Tribunal by adopting the multiplier 13 committed gross error.

As the victim died as bachelor, deduction will be to the extent of 1/2nd instead of 1/3rd which the learned Tribunal held. This finding of the learned Tribunal needs modification. The learned Tribunal has assessed general damages to the tune of Rs.4,500. But, in view of the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680*** the claimant is entitled to get Rs.15,000 as loss of estate and Rs.15,000 as funeral expenses.

The impugned award shows that the learned Tribunal directed that the claimant was entitled to interest at the rate of 9 per cent per annum upon the awarded sum from the date of the order till realisation of the awarded amount. But in view of the decision in ***Sarla Verma*** (supra), the claimant is entitled to get interest from the date of filing of the claim application.

In view of the above, the award passed by the learned Tribunal requires modification in the following manner:

a) Monthly income to be assessed = Rs.2000
b) Annual income to be assessed
Rs.2,000x12 Rs.24,000/-
c) Future prospects to be assessed
at the rate of 40% = Rs.9,600/-
d) Deduction to the extent of 1/2nd = Rs.16,800/-
e) Adopting multiplier 18 as per the age of the

victim of 20 years
Rs.1,68,000/-x18 = Rs. 3,02,400/-

f) General damages,
loss of estate + funeral expenses= Rs.30,000/-.

g) Total compensation on
loss of dependency = Rs.3,32,400/-

Admittedly, the insurance company paid Rs.50,000/- to the claimant under section 140 of the Motor Vehicles Act, 1988. As it appears from the LCR, the appellant-claimant received the amount of Rs.84,500/- on March 24, 2010.

Therefore, in view of the above, the claimant is now entitled to get further sum of Rs.1,97,900/- as compensation.

Besides, the appellant is entitled to get interest at the rate of 6% p.a. on the aforesaid amount of Rs.1,97,900/- from the date of filing of the claim application i.e. from November 10, 1997.

The respondent No.1, The Oriental Insurance Company Limited, is therefore directed to pay further awarded amount of Rs.1,97,900/- and interest at the rate of 6% p.a. on this amount of Rs.1,97,900/- from the date of filing of the claim application i.e. from November 10, 1997.

The Insurance Company is directed to deposit the aforesaid awarded amount of money with interest thereon as above with the learned Registrar General of this court by cheque within five weeks from date. After the aforesaid amount of money is deposited, the learned Registrar General shall release the amount to the claimant as expeditiously as possibly on proper identification of the claimant.

With the aforesaid directions, the appeal and the connected application, if any, stand disposed of.

No order as to costs.

Send down the LCR along with a copy of this order to the learned Tribunal for information.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

[Rabindranath Samanta, J]