

28.11.2022
KC(19)

F.M.A. 334 of 2010
Anima Sahana and Anr.
-versus-
The Oriental Insurance Company
Limited and Anr.
With
CAN 1 of 2013 (Old CAN No. 11547 of 2013)
(Application not in file)

Mr. Amit Ranjan Roy.....For the appellants.

Mr. Saswata Bhattacharya....For the respondent no. 1/
insurance company.

This appeal is directed against the judgment and award passed on 19th March, 2009 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court Murshidabad in Motor Accident Claim Case No.191 of 20072 under Section 166 of the Motor Vehicles Act, 1988.

One Susmita Sahana died in a motor accident on 1st February, 2007 at about 7.30 hours while she was crossing the pucca road near Manigram bus stand under Police Station - Sagardighi. The incident took place due to rash and negligent driving of the bus bearing No. WGD 2145 proceeding from the side of Raghunathganj towards Berhampore.

On account of said accidental death the claim petition was filed stating *inter alia* that at the time of accident the deceased was aged about 23 years and she

was a school teacher having monthly income of Rs.6,106/- . After the accident, Sagardighi Police Station Case No. 13 of 2007 dated 1st February, 2007 under Sections 279/338/304A of the Indian Penal Code was started and ended in charge-sheet. That is why the claim petition was filed by the parents of the deceased with a prayer for compensation to the tune of Rs.6,80,000/-.

The insurance company contested the case by filing written statement denying all material allegations in the claim petition contending *inter alia* that the claimants are entitled to compensation subject to proof of the statements made in the claim petition.

It is pertinent to mention here that mother of the deceased, i.e. one of the claimants died on 23rd January, 2018 leaving behind the legal heirs, i.e. one son and one daughter who were substituted in this appeal.

In course of trial, claimants examined three witnesses.

P.W. 1, father of the deceased has corroborated the entire averments of the claim petition. It is stated in his evidence that the deceased was spinster at the time of her death and she was a school teacher having gross income of Rs.6,106/- per month. In course of his evidence documents, namely, F.I.R., charge-sheet, seizure list, insurance policy, post-mortem report,

driving licence, copy of service book and salary certificate were admitted in evidence and marked as Exhibits 1 to 10.

P.W. 2, claiming to be an eye witness, has stated that he witnessed the accident as he accompanied the deceased at the time of accident, due to involvement of vehicle No. WGD 2145 and the accident took place due to rash and negligent driving of the vehicle.

P.W. 3, Sub-Inspector of Schools, Suti Circle, Murshidabad deposed in this case and in course of evidence he proved the original service book as well as the salary certificate of the deceased.

In course of argument Mr. Amit Ranjan Roy, learned advocate appearing on behalf of the claimants has referred to the judgment passed by the Tribunal and submitted that learned Tribunal did not take the gross salary after deduction of professional tax only at the time of assessment of the compensation. It is also submitted on behalf of the claimants that in terms of the age of the deceased, multiplier should be 18 and also in terms of settled principle laid down by the Hon'ble Apex Court deduction for personal expenses should be 50% of the income instead of 1/3rd.

In opposition, Mr. Saswata Bhattacharya learned advocate appearing on behalf of the insurance company supported the judgment passed by the learned Tribunal and submitted that the grounds taken by the claimants

in this appeal clearly manifest that multiplier should be considered in terms of the age of the mother of the deceased. It has been further submitted on behalf of the insurance company that there is no ground in this appeal claiming future prospect.

However, undoubtedly this case should be viewed in terms of beneficial legislation and also in terms of the principles laid down by the Hon'ble Supreme Court in several decisions. It is needless to mention that court should take the principle of "just compensation" irrespective of claim in terms of nature of the case under the beneficial legislation.

In this appeal the only ground has been taken regarding assessment of compensation. On a careful perusal of the evidence and exhibited documents, I do not find any necessity to enter into the matter of accident, income and age of the deceased. On perusal of the evidence I find that the victim suffered accidental death due to rash and negligent driving of the offending vehicle. Therefore, claimants are entitled to compensation.

Learned Tribunal assessed the compensation taking net salary of the deceased at the time of her death. In this regard learned advocate on behalf of the claimants has relied on the case of Vimal Kanwar –vs- Kishore Dan and Ors., reported in 2013 SAR (Civil) 584 wherein Hon'ble Apex Court held that person

responsible for paying any income chargeable under the head 'salaries' shall at the time of payment, deduct income tax on estimated income of the employee from 'salaries' for that financial year. Thereby Hon'ble Apex Court suggested deduction of professional tax and income tax but not any other pecuniary advantage.

In this case, it appears from the evidence of P.W. 3 together with the salary certificate that gross income of the deceased was Rs.6,361/- per month at the time of death. Rs. 45/- was deducted as professional tax.

In that view of the matter, I find that salary of Rs. 6,316/- per month should be taken into account for assessing compensation after applying multiplier 18 in terms of the age of the deceased at the time of death instead of any of the parents.

In the aforesaid view of the matter, I determine the compensation as follows:

Monthly Income	Rs. 6,316/-
Annual Income (Rs.6,316/- x 12)	Rs. 75,792/-
Less: 50% Deduction (personal expenses)	Rs. 37,896/-
Multiplier by 18 (Rs.37,896 x 18)	Rs.6,82,128/-
Add 50% future prospect	<u>Rs.3,41,064/-</u>
	10,23,192/-
Add: General Damages	Rs. 30,000/-
Total	<u>Rs.10,53,192/-</u>
Less – Already received	Rs.3,66,800/-
Enhancement:	Rs.6,86,392/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.10,53,192/- .

It is reported that the appellants/claimants have already received Rs.3,66,800/- from the insurance company.

Thereby, the appellants/claimants are entitled to the balance compensation amount of Rs.6,86,392/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., 18th April, 2007 till the deposit of the amount.

The Oriental Insurance Company is directed to deposit the balance amount of Rs.6,86,392/- along with interest @ 6% per annum from the date of filing of the claim petition 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 insurance company is directed to deposit the amount with the office of the learned Registrar General within the aforesaid time limit.

The appellants/claimants are entitled to withdraw the balance amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.3,73,192/-.

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

With the above observation, the appeal, being FMA 334 of 2010 is disposed of.

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

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

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

(BIBHAS RANJAN DE, J.)