

02. 11.07.2022
Ct. No.14
Tanmoy

F.M.A. 773 of 2022
Jasimuddin Khan & Ors.
-Versus-
S.B.S.T.C. Haldia Depo

Mr. Jayanta Banerjee, Adv.,
Mr. Sandip Bandyopadhyay, Adv.,
Ms. Ruxmini Basu Roy, Adv.

...for the appellants/claimants

Mr. Ayan Banerjee, Adv.,
Ms. Debasree Dhamali, Adv.

...for the respondent, S.B.S.T.C.

Feeling aggrieved by the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal, Fast-Track Court-II, Tamluk, Purba Medinipur in MAC Case No. 115 of 2014, the appellants have preferred the instant appeal. By the judgment dated October 27, 2017, the learned Tribunal directed the respondent, South Bengal State Transport Corporation, Haldia Depot, to pay an amount of Rs.3,21,500/- (Rupees Three Lakh Twenty One Thousand Five Hundred) as compensation to the claimants.

The claim application was filed by Amjed Khan, the husband of the deceased and the aforesaid appellants/claimants, the rest legal heirs of the deceased.

During the pendency of this appeal Amjed Khan died.

The facts emanating from the claim application may be adumbrated as under:

On April 5, 2014, at about 7 p.m., Jasiman Bibi, wife of Amjed Khan, a resident of village –Nandapur, P.S.-Chandipur, District – Purba Medinipur, was returning home from Chandipur Bazar along Chandipur-Nandigram bus road. While she reached near Arashal Pir Mandir, at that time a bus bearing No. WB-39A/1380 (S.B.S.T.C.), coming from Chandipur side with excessive speed and driven in rash and negligent manner, dashed Jasiman Bibi. As a result of which, she sustained grievous injuries on her person. Firstly, she was taken to Arashal Health Centre under Chandipur Police station and therefrom she was referred to District Hospital, Purba Medinipur at Tamluk. She was treated there on April 5, 2014. Subsequently, she was referred to NRS Medical College and Hospital, Kolkata, where she succumbed to the injuries on April 7, 2014.

Owing to rash and negligent driving on the part of the driver of the offending vehicle, the victim met with the accident and she lost her life.

On the allegations of rash and negligent driving on the part of the driver, one Chandipur P.S. Case No. 53 of 2014 dated April 22, 2014, under Sections

279/304(A), I.P.C. was registered for investigation. At the time of the accident, the victim was aged about 45 years. She used to earn Rs.5,000/- (Rupees Five Thousand) per month by carrying on vegetable business.

On the aforesaid facts, the claimant No.1 Amjed Khan since deceased who happened to be the husband of the victim and the other claimants who happen to be the legal heirs of her, sought for compensation of Rs.6,00,000/- (Rupees Six Lakh) with interest.

Upon hearing learned Advocates appearing for the parties and on consideration of the pleadings of the parties and the evidence on record, the learned Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), disposed of the claim application by awarding the compensation as above.

As it appears from the judgment of the learned Tribunal, the learned Tribunal, on assessment of the evidence on record, has held 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 her life because of the accident. However, on analyzing the evidence on record I do not find any justification to differ from the findings recorded by the learned Tribunal. Be that as it may, no appeal and cross-objection has been preferred by the respondent, S.B.S.T.C., challenging the findings as recorded by the

learned Tribunal. That being so, it stands proved that due to rash and negligent driving on the part of the driver of the offending vehicle, the victim sustained severe injuries on her person and she succumbed to the injuries. Admittedly and as it appears from the evidence on record, the victim, at the time of the accident, was aged about 50 years. Therefore, it is not in dispute that the learned trial Judge rightly adopted the multiplier 13. What it transpires from the findings of the learned Tribunal, the learned Judge has held that the victim used to earn Rs.3,000/- (Rupees Three Thousand) per month. But, as has been held in a number of decisions rendered by this Hon'ble Court, monthly income of any labourer or a workman during the year 2011-2014 shall be held to be of Rs.4,000/- (Rupees Four Thousand) in the absence of any documentary evidence in that regard. Learned Counsel appearing for the respondent does not dispute that the monthly income of the deceased should be assessed at Rs.4,000/- (Rupees Four Thousand) per month in the year 2014.

Learned Counsel appearing for the appellants submits that the learned Tribunal did not consider that the claimants are entitled to compensation on the count of future prospects. In such context, learned Counsel for the appellants has cited a decision in the case of ***National Insurance Company Limited -Vs.-***

Pranay Sethi, reported in **(2017) 16 SCC 680**. Placing reliance on this decision, learned Counsel points out that the learned Tribunal erroneously awarded Rs.9,500/- (Rupees Nine Thousand Five Hundred) on the counts of loss of estate, funeral expenses, etc. But in view of the decision in **Pranay Shethi (supra)** the claimants are entitled to Rs.15,000/- (Rupees Fifteen Thousand) on the count of loss of estate; Rs.40,000/- (Rupees Forty Thousand) on the count of loss of consortium and Rs.15,000/- (Rupees Fifteen Thousand) on the count of funeral expenses.

Learned Counsel appearing for the respondent submits that if the claim as made by the claimants is admissible to them in view of the decisions in the case of **Pranay Sethi** and **Sarla Verma, (2009) 6 SCC 121** he will have no objection to it.

Since the learned Tribunal has failed to consider that the claimants are entitled to 25% on the count of future prospects and Rs.70,000/- (Rupees Seventy Thousand) on the counts of loss of estate, consortium and funeral expenses, I think that the award passed by the learned Tribunal needs modification in the following manner:

Monthly income = Rs.4,000/-

Yearly income = Rs.48,000/-

Rs.4,000/- x 12

Future prospects = Rs.12,000/-

@25%

Total – = Rs.60,000/-

Deduction to the = Rs.20,000/-

extent of 1/3rd

(on admission)

Total - Rs.(60,000-20,000)/-

= Rs.40,000/-

Adopting Rs.40,000/- x 13

Multiplier 13 = Rs.5,20,000/-

considering the

age of the victim

of 50 years

General damages, = Rs.70,000/-

Loss of estate+

Consortium+

Funeral expenses

Total - Rs.5,90,000/-

There is no objection on the part of the claimants
that if Rs.40,000/- (Rupees Forty Thousand) as

spousal consortium which was admissible to the claimant no.1 Amjed Khan, since deceased is equally distributed amongst all the claimants.

Admittedly, as it appears from the order dated December 22, 2017 of the learned Tribunal, the claimants have already received Rs.3,21,500/- (Rupees Three Lakh Twenty One Thousand Five Hundred) as compensation. In such factual scenario, the claimants are now entitled to get compensation of Rs.2,68,500/- (Rupees Two Lakh Sixty Eight Thousand Five Hundred).

As it has been held in a catena of decisions and since the interest of banking transaction does not exceed 6% per annum, I feel that it will be wise to direct the respondent to pay interest @ 6% per annum on the awarded amount of money.

In view of the above, the appeal merits success and accordingly the appeal is allowed on contest against the respondent.

On modification of the award passed by the learned Tribunal it is directed that the respondents shall pay further compensation of Rs.2,68,500/- (Rupees Two Lakh Sixty Eight Thousand Five Hundred) to the claimants. The respondent is directed to pay interest @ 6% per annum on the awarded amount of money from the date of filing of the claim application.

The respondent shall pay interest @ 6% per annum on the awarded amount of Rs. 3,21,500/- (Rupees Three Lakh Twenty One Thousand Five Hundred) to the claimants, if not already paid, from the date of filing of the claim application till December 22, 2017.

The respondent is further directed to pay interest @ 6% per annum on the further compensation of Rs.2,68,500/- (Rupees Two Lakh Sixty Eight Thousand Five Hundred) from the date of filing of the claim application.

The respondent is directed to pay the aforesaid further awarded amount of money with interest as indicated above to the claimants namely Jasimuddin Khan, Najimuddin Khan, Shamilla Bibi, Salima Bibi and Manira Bibi in equal share by issuing separate account payee cheques in their favour within six (6) weeks from date.

With the aforesaid direction, the appeal being F.M.A. 773 of 2022 and all connected applications, if any, stand disposed of. However, there will be no order as to costs.

Let urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Rabindranath Samanta, J.)