Ct. No. 14

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04.7 2022

F.M.A. 623 of 2011

IA No. CAN 1 of 2011 (Old No. CAN 6088 of 2011)

Smt. Madhuri Dutta & Anr.
-Versus-
The Oriental Insurance Co. Ltd. & Ors.

Mr. Krishanu Banik ...**For the Appellants**

Ms. Sucharita Paul ...**For the Respondent No. 1 Insurance Co.**

Being aggrieved by the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal, Special Court, Paschim Medinipore in MACC No. 117 of 2009 the appellants/claimants have preferred the instant appeal.

By the judgment dated June 06, 2010, the Motor Accident Claims Tribunal (hereinafter referred to as the learned Tribunal) allowed the aforesaid claim case in part against the Insurance Company, the Oriental Insurance Company Ltd., on contest and ex parte both the owners of the offending vehicles.

The learned Tribunal directed that both the Insurance Co. and the owners of the offending vehicles were liable to pay the compensation as awarded. Accordingly, out of the compensation of Rs. 1,99,500/- as awarded, the Tribunal directed the Oriental Insurance Co. to pay a sum of Rs. 99,750/- and owners of the offending vehicles to pay rest amount of compensation.

The facts as narrated in the claim application under Section 166 of the Motor Vehicles Act may be summarized as under :-

On February 20, 2009 at about 2.05 hours a bus bearing No. WB 33A/2277 was coming to Midnapore along Ghatal-Keshour metal road via Narajole with high speed rashly and negligent manner violating traffic and road rules. Because of such rash and negligent driving on the part of the driver of the aforesaid bus dashed a pick up van bearing No. W.B. 33A/0392, which was standing by the side of the road. The driver of the pick up van was narrowly escaped. Owing to the rash and negligent driving of the aforesaid bus (offending vehicle), some persons of the pick up van who were going along with their goods sustained serious injuries on their persons. Amongst the person who sustained injuries, Champa Dutta, the victim herein, succumbed to the injuries.

On the allegations of the rash and negligent driving of the offending vehicle, one Daspur Police Station Case No. 26/09 dated February 20, 2009 under Sections 279/338/304A of the Indian Penal Code was registered for investigation.

At the time of accident, both the offending bus and the aforesaid pick up van were registered with the Oriental Insurance Company Ltd. The victim Champa Dutta died at the age of 18 years. She used to assist her father in carrying out his business.

The monthly income of the deceased was Rs. 3,000/- per month. The claimants, Smt. Madhuri Dutta and Sri Saktipada Dutta are the parents of the deceased.

On the grounds as above, the claimants sought for compensation of Rs. 3,50,000/-.

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

The appellants have come up before this Court for enhancement of the compensation on the ground that the learned Tribunal erred both on facts and in law in awarding the compensation which is lesser than that of the compensation the claimants are entitled.

As recorded by the learned Tribunal, the victim used to assist her father in carrying out the business of vegetables. Though no documentary evidence was available before the learned Tribunal to evince her monthly income it is not in dispute that in view of series of decisions of this Court, the monthly income of any labourer or a workman shall be held to be of Rs. 3,000/- upto the year 2010. As held by the learned Tribunal, both the owners of the offending vehicles were liable to pay 50% of the compensation out of the compensation as awarded by the learned Tribunal. Now, the question is whether both the two owners of the offending vehicles or the Insurance Company itself will be directed to pay the compensation, which the claimants are entitled.

Mr. Krishanu Banik, learned Counsel for the appellants referring to a decision in the case of ***Khenyei Vs. New India Assurance Co. Ltd. & Ors.,*** reported in **2015 ACJ 2014** submits that where there is a composite negligence, the Court can direct any of the tortfeasors to pay compensation.

In such context, Mr. Banik draws my attention to paragraph 18 of the said judgment.

Ms. Sucharita Paul, learned lawyer appearing for the Insurance Company opposing the submission of Mr. Banik submits that the award of the learned Tribunal is justified.

The Hon'ble Apex Court in the decision of the case ***Khenyei Vs. New India Assurance Co. Ltd. & Ors.,*** reported in **2015 ACJ 2014** has held at paragraph 18 of the judgment as follows:-

> ***"18.(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.***
>
> ***18(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other aftger making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal in main case, one joint tortfeasor can recover the amount from the other in the execution proceedings.***
>
> ***18(iv) it would not be appropriate for the court/Tribunal to determine the extent of composite***

negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desire, to sue the other joint tortfeasor in independent proceedings after passing f the decree or award."

Having heard learned Counsel appearing for the parties and considering the evidence on record I think that the respondent No. 1, Oriental Insurance Co., with which both the two vehicles were insured may be directed to pay the compensation which the claimants are entitled.

As quoted above, the victim Champa Dutta died unmarried at the age of 18 years. It is not in dispute that her income will be treated to be of Rs. 3,000/- per month. In view of the decisions in the case **of *National Insurance Company Limited -Vs.- Pranay Sethi & Ors.*,** reported in **(2017) 16 SCC 680** and in the case of ***Smt. Sarala Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.*,** reported in **(2009) 6 SCC 121,** the compensation as awarded by the learned Tribunal needs modification.

The assessment of compensation would be in the following manner : -

1.	Monthly Income be assessed at	Rs.	3,000/-
2.	Annual Income be assessed at (Rs. 3,000 X 12)	Rs.	36,000/-
3.	Future Prospect be assessed @ 40%	Rs. Rs.	14,400/- 50,400/-
4.	½ Deduction of the income (Rs.50,000 - Rs. 25,200/-)	Rs.	25,200/-
5.	Adopting Multiplier 18 as per age of victim (Rs.25,200/- X 18)	Rs.	4,53,600/-

6.	General Damages Loss of Estate & Funereal Expenses	Rs. 30,000/- ========== Rs. 4,83,600/-

Therefore, the Insurance Company is liable to pay the aforesaid compensation of Rs. 4,83,600/- to the appellants/claimants.

Admittedly and as it appears from the lower Court record, the Insurance Company has already paid Rs. 99,750/- along with interest.

Therefore, the Insurance Company is now liable to pay the rest amount of Rs. 3,83,850/-.

Mr. Banik learned Counsel appearing for the appellants submits that interest be awarded at the rate of 7.5% per annum.

As the interest in respect of any Banking transaction does not exceed 6% per annum I think it would be prudent if the interest at the rate of 6% per annum is ordered on the aforesaid amount of compensation.

Therefore, on modification of the award passed by the learned Tribunal it is directed that the respondent No. 1, Oriental Insurance Co. Ltd. shall pay the compensation of Rs. 3,83,850/- to the appellants/claimants. The respondent No. 1 is further directed to pay interest at the rate of 6% per annum on the awarded amount of Rs. 3,83,850/- from the date of filing of the claim application, i.e., March 31, 2009. The respondent No. 1 is directed to deposit the aforesaid amount of money with interest thereon by cheque with the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

After the deposit is made by the Insurance Company, the learned Registrar General shall release the aforesaid awarded money to the claimants in equal share as expeditiously as possible.

In view of the above direction the appeal and connected application, if any, stand disposed of.

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

(Rabindranath Samanta, J.)