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F.M.A. 477 of 2022
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Gourab Goswami & anr.
Vs.
Sriram General Insurance Co. Ltd. & anr.

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

Mr. Rajesh Singh
... For the respondent/Insurance Co.

Assailing the compensation as awarded by the learned Judge, Motor Accident Claims Tribunal(hereinafter be referred to as the Tribunal), Fast Track Court-IV, Krishnagar, Nadia in M.A.C.C. No. 22 of 2018 as the inadequate compensation the appellants, Gourab Goswami and Pratiba Goswami have preferred the instant appeal. By the judgment dated 29.09.2021, the learned Tribunal directed the respondent no.1, Sriram General Insurance Company Limited, to pay the compensation of Rs.30,07,906/- together with interest at the rate of 6% per annum from the date of filing of claim application to the claimants.

Background facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act and which are necessary for adjudication may be summed up as under:-

On 16th December, 2017, at about 10.30 a.m. Narayan Goswami, son of Late Dhirendra Mohan

Goswami of Paschim Kamarthuba, P.S. Chapra, District Nadia, was standing in front of Rasulullahpur Madrasah. At that time one auto rickshaw being No.WB-89/1002 coming in an excessive speed and driven in rash and negligent manner dashed him. As a result of which he sustained injuries on his person and he died on the spot. The victim was an assistant teacher of Rasulullahpur Senior Madrasah and he used to get salary of Rs.50,022/- per month. He died at the age of 59 years.

Owing to rash and negligent driving on the part of the offending vehicle, the accident took place and the victim lost his life because of the accident. At the time of accident the offending vehicle was insured with the respondent no.1, Sriram General Insurance Company Limited.

Owing to the sudden demise of the victim, the claimants who happen to be his son and daughter, fell in an acute financial distress.

On the grounds as above, the claimants sought for compensation of Rs.32,09,564/- and interest thereon.

The respondent No.1, the Insurance Company contested the claim application by filing a written statement wherein it denied the allegations/averments in the claim application and sought for dismissal of the claim application.

Upon hearing learned Advocates appearing for the parties and on consideration of the evidence on record, the learned Tribunal partly allowed the claim application and awarded the compensation as indicated above.

No appeal or cross-objection has been preferred by the Insurance Company. That being so, the uncontroverted findings of the learned Tribunal show that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim breathed his last because of the accident.

Learned lawyer appearing for the appellants submits that the learned Tribunal erred in deducting one-half out of the income of the victim towards his personal and living expenses. Learned lawyer submits that the victim was married and the claimants are his son and daughter. In such context, learned lawyer by citing paragraph 30 of the decision in the case of ***Sarla Verma Vs. Delhi Transport Corporation and others***, reported in ***2009(6) SCC 121***, submits that the deduction on the count of personal and living expenses should be 1/3rd instead of 1/2.

However, learned lawyer submits that he does not dispute with the compensation on the other counts as awarded by the learned Tribunal.

Per contra, learned lawyer for the respondent no.1 submits that the learned Tribunal erred in awarding compensation on the count of general damages to the extent of Rs.70,000/-. Learned lawyer points out that the wife of the deceased predeceased him and as such, the claimants are not entitled spousal consortium of Rs.40,000/- as awarded by the learned Tribunal.

As held by the Hon'ble Apex Court at paragraph 30 of the case of ***Sarla Verma*** (supra), deduction on the count of living and personal expenses should be 1/3rd if the victim had upto three family members, irrespective of dependancy.

Admittedly, the deceased died leaving behind the appellants/claimants as his son and daughter. Therefore, the deduction on the count of personal and living expenses should be to the extent of 1/3rd instead of 1/2.

Admittedly, the wife of the victim predeceased him. So the claimants are not entitled to get Rs.40,000/- as spousal consortium as awarded by the learned Tribunal. However, learned lawyer for the appellants does not dispute the compensation as awarded by the learned Tribunal on other counts.

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

Particulars	Amount
Monthly income	47,309.25
Annual Income Rs.47,309.25 X 12	5,67,711.00
Deduction to the extent of 1/3rd (Rs.5,67,711 – 1,89,237)	3,78,474.00
Total loss of yearly income	3,78,474.00
Future prospects @ 15% (Rs.3,78,474.00 + 56,711	4,35,245.00

Adopting Multiplier 9
Considering the age of the victim
As of 59 years
(Rs.4,35,245.00 X 9) 39,17,205.00
General Damages –
Loss of estate Rs.15,000.00
Funeral expenses Rs.15,000.00 30,000.00
Total compensation i.e. loss of
dependency (Rs.39,17,205 + 30,000) 39,47,205.00

Admittedly, the claimants received compensation of Rs.30,07,906/-. Therefore, the claimants are now entitled to get further compensation of Rs.9,39,299/- (Rs.39,47,205 – Rs.30,07,906).

As correctly observed by the learned Tribunal, the claimants are entitled to get interest @ 6% p.a. on the awarded amount of money from the date of the claim application.

Therefore, on modification of the award passed by the learned Tribunal, the respondent no.1 is directed to deposit further awarded amount of Rs.9,39,299/- and interest @ 6% p.a. thereon from the date of filing of the claim application, i.e. from 16.2.2018 by way of cheque with the learned Registrar General of this High Court 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, after being satisfied with the identity of the claimants.

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

No order as to costs.

Let a copy of this order be sent to the learned Tribunal for information.

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

(Rabindranath Samanta, J.)