22-08-2022
Item no.13
Subrata

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

FMA No.3015 of 2016
Smt. Sudeshna Deb Singha & Ors.
-vs-
The National Insurance Company Limited & Anr.
with
CAN No.2 of 2022

Mr. Amit Ranjan Roy ...for the appellants

Mr. Rajesh Singh ...for the insurance company

This appeal has been preferred by the claimants aggrieved by a judgment and award dated August 28, 2014 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 2nd Bench, City Civil Court, Calcutta in MJC Case No.422 of 2011.

By the impugned judgement, the learned tribunal directed the National Insurance Company Limited to pay a sum of Rs.27,83,268/- as compensation to the claimants and to pay interest at the rate of 10% p.a. on the awarded amount from the date of filing of the claim application – November 28, 2011.

The appellants by approaching this court pray for enhancement of the aforesaid compensation.

The facts emanating from the claim application under section 166 of the Motor Vehicles Act, 1988 and which are necessary for adjudication may be summed up as under.

On the night of 00.30 hours on October 31, 2011, while Tarun Deb Singha, a constable of Kolkata Police, was driving a motorcycle bearing No.WB20Q-8743 along Khidderpore Road and reached near 11 No. Furlong Gate in front of HRBC under Hastings police station, then a vehicle bearing No.WB-11A-9922 which was coming at an excessive speed driven in rash and negligent manner dashed the motorcyclist. As a result of which he failed down from the motorcycle and sustained severe head injuries. While he was taken to SSKM Hospital for medical treatment, the attending doctor declared him as brought dead.

The claimants allege that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place and the victim died because of the accident. The victim died at the age of 39 years. He was a constable under the Commissioner of Kolkata Police. He used to earn Rs.21,256/- per month as salary.

On the allegations of rash and negligent driving on the part of the driver of the offending vehicle, an FIR was lodged at Hastings police station and the FIR was registered as Hastings P.S. Case No.196 of 2011 dated November 31, 2011 under sections 279/304A/427 IPC. Because of the untimely and sudden demise of the victim, the claimants – Smt. Sudeshna Deb Singha, Barsat Deb Singha, Sagar Deb Singha and Smt. Maynamati Deb Singha who happened to be his widow, two children and the mother of the victim respectively and dependent on him – fell in acute financial crisis.

At the time of the accident, the offending vehicle was insured with the aforesaid insurance company.

On the facts as above, the claimants sought for compensation of Rs.32,00,000/- with interest thereon.

Upon hearing learned advocates for the parties and on consideration of the evidence adduced before it, the learned tribunal partly allowed the claim application and awarded compensation as indicated above.

No appeal or cross-objection as well has been filed challenging the finding of the learned tribunal on the part of the insurance company. The uncontroverted findings recorded by 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 died because of the accident. I find no reason to differ from the findings as recorded by the learned tribunal.

Admittedly, at the time of the accident, the offending vehicle was insured with the National Insurance Company Limited.

The learned tribunal on analysing evidence on record has held that the monthly income of the deceased was Rs.21,256/-. As the copies of the evidence in the paper book show, the victim died at the age of 39 years. As it appears, the learned tribunal adopted multiplier 16 to assess the compensation. The Hon'ble Apex Court in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121,** has held at **paragraph 42,** if the victim died within the age group of 36-40 years, the multiplier 15 would be adopted. Therefore, learned tribunal erred in adopting the multiplier 16, instead of 15.

Learned counsel for the appellants contends that the learned tribunal did not assess any compensation on the count of future prospects. According to learned counsel, future prospects @ 50% of the income of the deceased should be added to calculate the compensation towards the loss of dependency. In such context, learned counsel cited a decision in the case of **National Insurance Company Limited v. Pranay Sethi** reported in **(2017) 16 SCC 680** where the Hon'ble Apex Court has held at paragraph 59.3 that while determining the income, an addition of 50% of actual salary of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years of age, should be made. According to learned counsel, the learned tribunal ought to have added 50% of the actual salary of the deceased as future prospects to calculate the compensation.

It also appears from the judgement of the learned tribunal that it awarded compensation on the count of general damages to the extent of Rs.62,500/-. The Hon'ble Supreme Court in **Pranay Sethi's** case (supra) at para graph 59.8 has held that reasonable figures of conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Therefore, the claimants are entitled to get Rs.70,000/- in the above respect, instead of Rs.62,500/-.

The learned tribunal directed the insurance company to pay interest at the rate of 10% p.a. on the awarded amount from the date of filing of the claim application. As informed by learned counsels for the parties, the compensation as awarded by the learned tribunal was deposited with the learned tribunal and the amount had already been disbursed to the claimants. Since awarding the interest was left with the discretion of the learned tribunal considering the relevant factors as then prevalent, I think that at this stage it would not be apposite to disturb the aforesaid inference arrived at by the learned tribunal on the point of interest.

In view of the above, the award passed by the learned tribunal dated August 28, 2014 needs modification in the following manner:

Yearly income (Rs.21,256/- x 12)	= Rs.2,55,072/-
Deduction to the extent of 1/3	=(-) Rs.85,024/-
Total	= Rs.1,70,048/-
Future Prospects @ 50%	=(+) Rs.85,024/-
Total Annual Income	= Rs.2,55,072/-
Adopting **Multipler 15** considering the age of the victim of 39 years Rs.2,55,072x15	= Rs.38,26,080/-
General damages	
Loss of estate @ Rs.15,000/-	
Loss of spousal consortium @ Rs.40,000/-	
Funeral expenses @ Rs.15,000/-	
Total	=Rs.70,000/-
Total compensation comes to	= **Rs.38,96,080**/-

As mandated by the Hon'ble Apex Court in **Pranay Sethi's** case (supra), spousal consortium of Rs.40,000/- is admissible to the widow of the victim. Learned counsel for the appellants submits that he has no objection if this amount is equally distributed amongst all the claimants.

Therefore, in view of the above, the appellants are entitled to get Rs.38,96,080/- as total compensation. Admittedly, the appellants have already received a sum of Rs.27,83,268/- as awarded by the learned tribunal. Therefore, they are now entitled to get further amount of Rs.11,12,812/- (Rs.38,96,080/- – Rs.27,83,268/-).

Considering the factum that the learned tribunal directed the insurance company to pay interest at the rate of 10% p.a., I, considering all aspects, feel that if the insurance company is directed to pay interest at the rate of 4% p.a. on the further awarded amount of money, it would meet for the interest of justice so far as this appeal is concerned.

Accordingly, the National Insurance Company Limited, the first respondent herein, is directed to deposit the amount of Rs.11,12,812/- with interest at the rate of 4% p.a. on this amount from the date of filing of the claim application (November 28, 2011) by way of cheque in favour of the learned Registrar General, High Court, Calcutta with his office within six weeks from date.

Once the deposit as above is made, the learned Registrar General shall release the amount to the appellants-claimants in equal share after being satisfied with their identity.

With the above directions, the appeal along with the connected application, if any, stands disposed of . No order as to costs.

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

Certified copy of this order, if applied for, shall be given to the parties upon compliance with all requisite formalities.

[Rabindranath Samanta, J]