16.09.2022
SL No. 1
Court No. 654
Ali

<u>F.M.A. 2891 of 2016</u>

IA No: CAN 1/2015 (Old No.:CAN 9039/2015)
CAN 2 of 2016 (Old No: CAN/5913/2016)

The Oriental Insurance Co. Ltd.
versus
Ganga Rajwar & Ors.

With
COT 62/2022

Mr. Parimal Kumar Pahari
......for the appellant.

Mr. Krishanu Banik
......for the respondents.

This appeal is directed against the judgement and order dated 21st April, 2015 passed by learned Judge, Motor Accident Claims Tribunal, 1st Court, Purulia in M.A.C.Case No. 4 of 2010 (48 of 2014) granting compensation to the tune of Rs. 5,23,200/- in favour of the claimants and Rs. 10,000/- towards loss of consortium for claimant no.1 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 30.06.2009 at noon while the deceased Bhim @ Bhim Chandra Rajwar was coming to village Chandra from Punura More along the Punura-Makarka road at that time the offending vehicle bearing No. WB-53A/0690 (truck) dashed him from behind resulting in severe injuries. The deceased was taken to the hospital where he was declared dead by the attending doctor.

Considering the materials on record and the evidences adduced by the parties the learned tribunal allowed compensation to the tune of Rs. 5,23,200/- in favour of the respondent nos. 1 to 7 (claimants) and Rs. 10,000/- to Respondent no.1 towards loss of consortium.

Being aggrieved by and dissatisfied with the said judgment and order dated 21st April, 2015 the Appellant-Insurance Company has preferred the present appeal.

Mr. Parimal Kumar Pahari, learned advocate for the appellant-Insurance Company submitted that the only ground in the appeal is that the offending vehicle at the time of the incident did not have valid route permit to ply and accordingly, the impugned award of compensation granted in favour of the claimant to be paid by the Insurance Company be set aside and in the alternative the respondent no.8-owner of the offending vehicle be directed to satisfy such amount as the Insurance Company cannot be held liable for the same.

Mr. Krishanu Banik, learned advocate for the respondent nos. 1 to 7 (claimants), in reply to the aforesaid contention of appellant-Insurance Company, submitted that neither there is any specific pleadings made by the appellant that the offending vehicle did not have valid route permit nor any cogent evidence has been adduced for establishing such fact. Thus the learned tribunal has rightly directed the appellant-Insurance Company to make payment of the sum awarded. He further submits that the respondent nos. 1 to 7 (claimants) have filed a cross objection being COT 62 of 2022 praying for enhancement of the compensation on the ground that the learned tribunal failed to assess compensation of award on the head of general damages and additional amount equaling to 25% of the annual income towards future prospect has also not been taken into consideration. In view of the above, he prayed for enhancement of the compensation amount.

None appears on behalf of respondent no. 8.

It appears from the judgement of the learned tribunal that respondent no. 8 did not contest the case before the tribunal and the case proceeded *exparte* against him. Hence the service of notice upon respondent no. 8 is dispensed with.

Having heard the learned advocates of both the sides let me at first consider the ground taken by the appellant that the offending vehicle did not have valid route permit on the date of incident. It is pertinent to note that in its pleading submitted before the learned tribunal by way of written statement, the appellant did not specifically and explicitly state that on the date of incident the offending vehicle did not have a valid route permit. The ground as aforesaid was pressed into service at the stage of argument. Be that as it may, the learned tribunal had considered such ground on the basis of available evidence on record. The appellant adduced the evidence of the erstwhile owner of the vehicle namely respondent no.8 herein as OPW-1. Though in examination-in-chief OPW-1 stated that he did not find the route permit on 30.06.2009 i.e. the date of incident but in cross examination he deposed that the route permit was upto date. The appellant-Insurance Company neither did adduce evidence of the route permit issuing authority nor were any records called from the office of the concerned authority to show the existence or non-existence of valid route permit of the offending vehicle, in support of its contention. On going through the impugned judgement and order of the learned tribunal, it is found that the learned tribunal has taken into consideration all the aspects and thereafter refused to accept the submission made on behalf of the Insurance Company that the offending vehicle was plying without any route permit. There is no perversity in such finding arrived at by the learned tribunal. Accordingly, the submissions made on behalf of the Insurance

Company for directing the owner of the vehicle namely respondent no.8 herein to make payment of the awarded sum falls short of merit.

The respondent nos.1 to 7(claimants) by way of filing cross objection being COT No. 62 of 2022 has prayed for enhancement of the award of compensation amount and such prayer is taken up for consideration.

The enhancement of award of compensation has been sought for on two fold grounds *firstly,* on the head of general damages and secondly, towards additional amount equaling to 25% of the annual income for future prospect.

From the impugned judgment and order of the learned tribunal it is found it has allowed funeral expenses to the tune of Rs.20,000/-, Rs. 50,000/- towards loss of estate and Rs. 10,000/- for loss of consortium. The Hon'ble Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi & Ors.*** reported in ***2017 ACJ 2700*** observed that figures under the conventional heads namely loss of estate, loss of consortium and funeral expenses of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively to be reasonable. Accordingly, the amount granted under the aforesaid conventional heads needs to be modified in the light of the decision of Hon'ble Supreme Court.

Further while assessing the compensation award the learned tribunal did not consider the aspect of future prospect of the deceased. The Hon'ble Supreme Court in ***Pranay Sethi & Ors. (supra)*** observed that in case of self-employed or person with fixed salary, an addition of 25% is to be made if the deceased is between the age of 40 and 50 years. As in the case at hand the deceased was 45 years at the time of accident, hence an additional amount @ 25% of the annual income is to be taken into consideration towards future prospect of the deceased.

The income of the deceased as assessed by the learned tribunal to the tune of Rs. 3000/- per month has not been disputed. The learned tribunal has also correctly applied multiplier 14 and made deduction towards personal living expenses of the deceased at $1/5^{th}$ of the annual income due to number of family members exceeding six.

In the aforesaid backdrop, the compensation award is calculated as follows:

CALCULATION OF COMPENSATION

Monthly Income……………………………….Rs.3,000/-
Annual Income………(Rs.3,000/-x 12)………Rs.36,000/-
Add: 25% of Annual Income
towards Future prospect………………. Rs.9000/-

Annual Loss of Income………………………Rs. 45,000/-
Less: Deduction of $1/5^{th}$ of the annual income
towards personal living expenses……… Rs.9000/-
Rs. 36,000/-
Adopting multiplier 14 (Rs 36,000/-X 14)…Rs,5,04,000/-

Add: General damages…………………………Rs. 70,000/-
Loss of Estate (Rs. 15,000/-)
Loss of Consortium (Rs 40,000/)
Funeral Expenses (Rs. 15,000/-)
Total compensation……………………… Rs.5,74,000/-

In the light of aforesaid discussion instant appeal fails and accordingly, **FMA 2891 of 2016** stands dismissed on contest.

The cross objection being **COT 62 of 2022** is, thus, allowed on contest. The impugned award of compensation dated 21st April, 2015 passed by the learned tribunal in MAC Case no.4 of 2010 stands modified to the aforesaid extent.

The respondents-claimants are entitled to a sum of Rs.5,74,000/- along with interest @ 6% per annum on the said amount from the date of filing of claim application till payment.

It appears that the appellant has deposited a sum of Rs. 25,000/- towards statutory deposit vide challan no. 1126 dated 31.07.2015 on filing of the appeal and Rs. 4,98,200/- with the learned Registrar General, High Court, Calcutta in terms of order dated 19.04.2016 by OD Challan no.313 dated 04.05.2016. Hence the amount already deposited as above with the learned Registrar General, High Court, Calcutta alongwith accrued interest shall be adjusted against the amount of compensation together with interest payable to the claimants as aforesaid.

Accordingly, the Appellant-Oriental Insurance Company Limited is directed to deposit the balance amount (if any) by way of cheque with the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

On deposit of the balance amount (if any) as aforesaid the learned Registrar General, High Court, Calcutta shall release the entire amount of Rs.5,74,000/- along with interest @ 6% per annum on the said amount from the date of filing of claim application till payment, in favour of the respondents-claimants in equal share after making payment of Rs.40,000/- to respondent no.1(widow) towards spousal consortium, upon being satisfied with the identity of the respondents-claimants. Respondent no.1 shall receive the share of the minor claimants namely respondent nos. 5 to 7 and keep their share in a fixed deposit scheme of a nationalized Bank or Post office till attainment of majority by them.

The appeal as well as the cross objection is accordingly disposed of, with the aforesaid direction.

No order as to costs.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower court records be sent to the learned tribunal for information.

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

(Bivas Pattanayak J.)