16.03.2022
Item No.3
Ct. No.7
CHC
(disposed of)

F.M.A.1143 of 2021
IA NO: CAN/1/2018 (Old No: CAN/2108/2018)
(Physical Hearing)

Saraswati Maity & ors.
Vs.
The Oriental Insurance Company Limited & anr.

Mr. Amit Ranjan Roy
…for the appellant/claimant

Ms. Sayanti Santra
…for the respondent no.1/
Insurance Company

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process.

It is submitted by Mr. Amit Ranjan Roy, learned advocate for the appellants/claimants that the appellants have been suffering from financial distress for want of sufficiency of money for their sustenance in this pandemic, and urges the Court for disposing of the appeal on the basis of materials furnished by both the parties to the case, which is not opposed by the learned advocate representing the Insurance Company/respondent no.1.

When learned advocates for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The instant appeal has emerged out against the judgement and award dated 26th October, 2017, passed by the Judge, Motor Accident Claims Tribunal. Re-Designated Court, Paschim Medinipur, in M.A.C. Case No.340 of 2013, on a claim under Section 166 of the Motor Vehicles Act, 1988 granting an award to the tune of Rs.5,32,000/- to the dependent claimants of the deceased Somnath Maity, aged about 25 years, for vehicular accident occurred on 15th June, 2013 by reason of involvement of vehicle bearing No.WB-34N/1001 in consequence of rash and negligent driving.

Mr. Amit Ranjan Roy, learned advocate representing the appellants/claimants fundamentally urges grounds in support of this appeal, which are three folds.

It is contended by the appellants/claimants that the learned Tribunal has erred in law in assessing the income of the deceased at Rs.3,000/- per month, instead of considering actual income of the deceased earned at the relevant time of accident. The income of the deceased, being a Khalasi, at the rate of Rs.5,000/- per month, according to the appellants/claimants, should have been taken into account by the learned Tribunal in deciding the quantum of compensation.

The second ground urged by the appellants/claimants is that the learned Tribunal has erroneously awarded Rs.1 Lakh upon considering the medical expenses incurred together with future prospect. Such approach and the observation made thereunder, according to appellants/claimants, are not in conformity with the settled proposition of law, as propounded by the Apex Court.

The third ground urged by the appellants/claimants is that the learned Tribunal has erroneously did not consider the 'general damages', on the conventional heads namely loss of estate, loss of consortium and funeral expenses, which should have been Rs.70,000/-.

Ms. Santra furnishes a written notes of submission containing calculation of the award, be kept with the record. The calculation shown in the written notes of submission is also checked by learned advocate for the appellants/claimants by putting his signature thereon.

Ms. Sayanti Santra, learned advocate representing the Insurance Company/respondent no.1 submits that the deceased was employed as Khalasi of a heavy goods vehicle (Truck) and said to have earned Rs.5,000/- per month. To prove the income, no document was produced during trial before the learned Tribunal. The learned Tribunal thus, in the absence of any documentary evidence proving the income of the deceased, has rightly assessed the income at the rate of Rs.3,000/- per month.

Without disputing with the facts leading to the death of the deceased Ms. Santra contends that to prove the age of the deceased, neither birth certificate, nor any cogent document in proof of the age of the deceased could be produced during trial.

Upon referring the claim petitioner, respondent no.1/Insurance Company submits that in the relevant column of the claim petition, the age of the deceased was described as 26 years. The voters card, as produced by the appellants/claimants, according to respondent no.1/Insurance Company, can never be a document to prove the date of birth of the deceased, wherein deceased was shown to have been born in 1988.

While making elaboration of the date of birth of the deceased, Ms. Santra refers to the Post Mortem report of the deceased, wherein the deceased was shown to be of 29 years of age. For variation of the age of the deceased, the learned Tribunal ought not to have considered the age of the deceased at 25 years.

The compensation, according to Ms. Santra ought to have been assessed considering the age of the deceased at 26 years instead of 25 years, and thus the multiplier should be selected as 17.

Without filing any COT application Ms. Santra controverts that multiplier should be selected as 17, instead of 18.

The respondent no.1/Insurance Company also submits that the awarded sum having already been disbursed by the Insurance Company, there lies no scope for making any enhancement of the award, which has already been accepted by the appellants/claimants. So there lies nothing to be interfered with in the impugned judgement.

As regards the multiplier, Mr. Roy is fair enough to submit that erroneous selection of multiplier would lead to inadequate quantification of the award.

One significant aspect has to be kept in mind that the deceased victim left this world, when he was 25 years old after being dashed by the offending vehicle. The dependents family members had to move from pillar to post for his survival. In such state of affairs, any of the relevant documents pertaining to the proof of age of deceased, though required, but same cannot be the document alone to reveal the age of the deceased. Hypertechnical approach is not desirable in the given context of this case. Since it is a piece of observation, available documents produced by the claimants during trial, should be taken into account providing a holistic approach with an aim to ensure a balance between the two, so that the dependents left behind by the deceased may not be put to face financial stringency for the loss of the deceased, as a victim of accident.

Justice always demands best evidence to be produced, but it differs from facts to facts. In the absence of any contrary document being produced, by the respondent no.1/Insurance Company, the voter's identity card should be taken into account being an imperative need to consider the age of the deceased, and it was quite sufficient to reveal that victim left this world, when he was 25 years old, and as such the multiplier should be 18 in this case.

Facts leading to the death of the deceased are not at all disputed.

Having considered the submission of the both sides, and bearing in mind the proposition of law laid down by the Apex Court in the cases of ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680,*** as well as precedence of our High Court, this Court is of the view that there is strong force in the submission advanced by the learned advocate for the appellants/claimants. The award granted by the learned Tribunal needs modification with respect to monthly income, and the same is to be considered at Rs.4,000/- per month. Upon considering the price index, the then prevailed, the said amount does not seem to be exorbitant, as a khalasi in the year 2013 can be reasonably expected to be having an income of Rs.4,000/- per month.

In addition, claimants/appellants would also be entitled to '40% future prospect' on the income of the deceased victim for appropriate quantification of the award, and Rs.70,000/- on the collective heads of 'general damages', in view of the ratio decided by the Hon'ble Apex Court in the case of ***Sarla Verma (Supra)*** as well as ***Pranay Sethi (Supra)***.

Accordingly, the impugned award is modified with the above observation made herein above and recalculated in the manner referred hereinafter:

Particulars	**Amount (Rs.)**
Monthly income	Rs.4,000/-
Yearly income	Rs.48,000/-
Deduction (1/3rd) (Rs.16,000/-)	 Rs.16,000/- Rs.32,000/-
Add: 40% future Prospects (Rs.12800/-)	 Rs.12,800/- Rs.44,800/-
Multiplier 18 (Age 25 years)	 X 18

	Rs.8,06,400/-
Add: General Damages	Rs.70,000/-
Total Compensation	Rs.8,76,400/-
Tribunal awarded and paid by the insurer	Rs.5,32,000/-
Total balance payable	**Rs.3,44,400/-**

The appellants/claimants acknowledge the receipt of the entire awarded amount of Rs.5,32,000/- along with interest. The enhanced sum of Rs.3,44,400/- would become payable to the claimants/appellants together with interest assessed at the rate of 6% per annum, from the date of filing of the claim petition till payment by the respondent no.1/Insurance Company within a period of 45 days from the date of receipt of the bank account particulars of the claimants/appellants from the learned advocate of the appellants.

The payment is to be made in the proportion as already directed by the learned Tribunal in award under challenge.

The said enhanced payment shall be paid by the respondent no.1/Insurance Company to the claimants/appellants through NEFT/RTGS.

With the aforesaid directions, the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

The concerned department is directed to tag the applications, if any, with the main appeal.

There shall be no order as to costs.

L.C.R., if any, may be returned back to the court below, if received in the meantime.

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

(Subhasis Dasgupta, J.)