15-12-2022
Item no.67
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.780 of 2021

Smt. Dulali Bhakta & Anr.

-versus-

The New India Assurance Company Limited & Anr.
with
CAN No.1 of 2018
(Old CAN No.8930 of 2018)

Mr. Saidur Rahaman ...for the appellants

Mr. Parimal Kumar Pahari ...for the insurance co.

This appeal is directed against a judgement and award passed by the learned Judge, Motor Accident Claims Tribunal, Redesignated Court, Paschim Medinipore in MACC No.667 of 2014 under section 166 of the Motor Vehicles Act, 1988.

Brief fact of the case is as follows. While the victim on November 5, 2008 at about 8.15 p.m. was coming from Panskura Puratan Bazar towards his house keeping left side of the road at NH6 at that time the offending vehicle bearing no.WB11A/6911 (truck) in a rash and negligent manner dashed him from behind with a great force and as a result of which the victim sustained deep bleeding injuries on his chest and all over his body and died on the spot. On account of sudden demise of the victim, the claimants being the widow and son of the deceased filed the claim application under Section 166 of the Motor

Vehicles Act, 1988 for compensation to the tune of Rs.5,00,000/- along with interest before the Motor Accident Claims Tribunal.

Upon considering the materials on record, the evidence adduced on behalf of the claimants, both oral and documentary, the learned tribunal allowed compensation to the tune of Rs.2,32,000/- along with interest from the date of filing of the claim application till realisation.

Being aggrieved by and dissatisfied with the impugned judgement and award, the claimants have filed the present appeal.

Mr Saidur Rahaman, learned advocate appearing for the appellants-claimants, submits that the learned tribunal erred in considering the multiplier 8 which should be 9 in view of the observations of the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121.*** He further submits that claimants are also entitled to an additional amount of 10% of the annual income of the deceased towards future prospect and general damages under the conventional heads, namely loss of estate, funeral expenses and loss of consortium, amounting to Rs.70,000/- in view of the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. In view of the above, learned advocate seeks for enhancement of the compensation amount.

Mr Parimal Kumar Pahari, learned advocate appearing for the respondnet no.1-insurance company, opposes the prayer for enhancement of the compensation amount.

It appears from the impugned judgement that the second respondent, the owner of the offending vehicle, did not contest the claim application before the learned tribunal and that the case was disposed of *ex parte* against him. In the aforesaid backdrop, service of notice of appeal upon the said respondent is dispensed with.

Having heard learned advocates appearing for the respective parties, now I proceed to decide the issues involved in the appeal.

With regard to the multiplier, it appears that considering the age of the deceased as 58 years, the learned tribunal adopted multiplier 8. However, following the observations of ***Sarla Verma's case (supra)***, the multiplier should be 9. Further as the deceased victim was 58 years old and was a labourer, hence in view of the observations of ***Pranay Sethi's case (supra)***, the claimants are entitled to additional amount of 10% on the annual income of the deceased towards future prospect.

Further the claimants are also entitled the general damages under the conventional heads, namely loss of estate, funeral expenses and loss of consortium of

Rs.15,000/- + Rs.40,000/- + Rs.15,000/- respectively.

The other findings of the learned tribunal, namely income of the deceased and deduction towards the personal and living expenses, has not been challenged in the appeal.

In view of the aforesaid aspects, the compensation is calculated as hereunder: –

Monthly income	Rs.3,000/-
Annual Income…(rs.3000/- X 12)………….	Rs.36,000/-
Add future prospect 10%	Rs.3,600/-
	Rs.39,600/-
Less: deduction of 1/3rd towards personal and living expenses	Rs.13,200/-
Annual dependency	Rs.26,400/-
Multiplier 9 (Rs.26,400 x 9)	Rs.2,37,600/-
Add:General Damages	Rs.70,000/-
Loss of estate….Rs.15,000/-	
Loss of consortium..Rs.40,000/-	
Funeral Expenses…Rs.15,000/-	
Total	Rs.3,07,600/-

Thus the total compensation comes to Rs.3,07,600/-. It is informed that a sum of Rs.2,32,000/- along with interest @ 6% per annum as granted by the learned tribunal. Hence the claimants are entitled to the balance amount of Rs. 75,600/- along with interest @ 6% per annum from the date of filing of the claim application till deposit is made.

Accordingly, the first respondent-insurance company, is directed to deposit the balance amount of

Rs.75,600/- along with interest at the rate of 6% p.a. from the date of filing of the claim application till the date of deposit by way of cheque before the learned Registrar General of this court within six weeks from date. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall disburse the amount after making payment of Rs.40,000/- in favour of the first appellant and the balance in equal share, subject to satisfying their identity.

Appellants-claimants are directed to deposit advalorem court fees on the enhanced amount, if not paid already.

With the above observation, the appeal and the connected application, if any, stand disposed of.

Interim order, if any, stands vacated.

Certified copy of this order, if applied, shall be given to the parties.

[Bivas Pattanayak, J]