Ct. No. 14

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03.8 2022

F.M.A.T 283 of 2020

Putul Santra & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Ashique Mondal ...For the Appellants /Claimants

Mr. Sanjay Paul ...For the Respondent/Insurance Co.

Challenging the compensation as awarded by the learned Judge, Motor Accident Claims Tribunal (hereinafter referred to as the learned Tribunal), 6th Court, Paschim Medinipur, in MACC No. 454 of 2016, as inadequate compensation, the appellants have preferred the instant appeal.

By the impugned judgment and award dated February 02, 2019 learned Tribunal directed the respondent No. 1, the Oriental Insurance Company Ltd. to pay compensation of Rs. 9,60,000/- to the appellant Nos. 1, 2 and 3/claimants as compensation in the manner as indicated in the award.

Learned Tribunal directed the Insurance Company to pay interest @ 6% per annum on the aforesaid awarded amount of money.

The 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 summarized as under :-

On 30th May, 2016 at about 10.30 a.m. Sanjit Santra of village – Panchrukhi, P.O.- Amdapal, District – Paschim Medinipur and his friend were going towards Jhargram from his house by riding his bicycle keeping himself on the left side of the metal road. When they reached near Garro, at that time one pick-up van, bearing No. WB-33B/0525 coming from the back side with excessive speed and driven in a rash and negligent manner, dashed them from behind. As a result of which, the victim and his friend fell down on the road and sustained grievous bleeding injuries on their person. Sanjit Santra was taken to Jhargram Hospital, but due to his critical condition of health he was shifted to Kolkata Medica Nursing Home. After that he was also taken to P.G. Hospital and thereafter he was admitted at Bhubaneswar Kalinga Nursing Home where he died. The victim died at the age of 33 years. He was a driver by occupation and he used to earn Rs. 7,500/- per month. Owing to untimely demise of the victim the family members of the deceased fell in acute financial distress. The accident took place due to rash and negligent driving on the part of the driver of the offending vehicle and the victim lost his life because of the accident.

On the allegations of rash and negligent driving on the part of the offending vehicle, an FIR was lodged at Jhargram Police Station and the FIR was registered as Jhargram Police Station Case No. 86 of 2016 under Sections 279/338/304A of the Indian Penal Code for investigation. At the time of accident, the offending vehicle was insured with the respondent No. 1, the Oriental Insurance Company Ltd.

On the facts as stated above, the appellants/claimants sought for compensation of Rs. 8,50,000/- with interest.

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

On assessment of the evidence on record, the Tribunal has recorded the finding that due to rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-33B/0525, the accident took place and the victim breathed his last because of the accident. On analyzing the evidence on record I do not find any reason to depart from the finding as recorded by the learned Tribunal. In view of this and since the respondent No. 1/ Insurance Company neither filed any appeal nor preferred any cross objection, it stands proved 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.

Admittedly, at the time of the accident, the offending vehicle was insured with the respondent No. 1, the Oriental Insurance Company Ltd. The uncontroverted findings of the learned Tribunal show that the victim died at the age of 33 years and before his death he used to earn Rs. 7,500/- per month.

Learned Lawyer appearing for the appellants submits that the learned Tribunal erred in not awarding any compensation on the count of future prospects. Learned lawyer submits that in view of the decision in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680** the claimants are entitled to get compensation on the count of future prospect. According to learned lawyer the claimants are also entitled to get Rs.70,000/- on the count of general damages in view of the decision of ***Pranay Sethi*** (supra).

Per Contra, learned Lawyer appearing for the respondent/Insurance Company contending the submission advanced by the learned Lawyer for the appellants submits that the award passed by the learned Tribunal was justified and the claimants are not entitled to get any further compensation.

In the decision in the case of ***Pranay Sethi (Supra)*** the Hon'ble Apex Court at paragraph 59.4 **has** held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be warrant where the deceased was below the age of 40 years. In view of this directive of the Hon'ble Apex Court, it goes without any say that the claimants are entitled to get compensation on the count of future prospect to the extent of 40%. The Hon'ble Apex Court at paragraph 59.8 has held that reasonable figures on 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. That being so, the claimant No.1 is entitled to get spousal consortium of Rs. 40,000/- and all the eligible claimants are entitled to get Rs. 15,000/- as loss of estate and Rs.15,000/- as funeral expenses. Learned Counsel for the appellants submits that if the aforesaid amount of Rs. 70,000/- is distributed amongst the claimants none of them will have any objection.

Admittedly, the learned Tribunal has adopted multiplier 16 considering the age of the victim as 33 years. Learned Counsel for the parties submit that they are on ad idem that the learned Tribunal rightly used the multiplier 16.

As it appears from the impugned award, the learned Tribunal did not grant any sort of compensation to the appellant No. 4, Subodh Santra, father of the victim. In view of the decision in the case of ***Sarala Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121**, the mother will be the dependant of the deceased and not the father. That being the legal scenario, the learned Tribunal justified in not granting any compensation to the father of the deceased, the appellant No. 4.

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

Monthly income=	**Rs. 7,500/-**
Yearly income (Rs. 7,500 X 12) =	**Rs. 90,000/-**
1/3rd deduction on account of Personal expenses	**Rs. 30,000/-**
Total (90,000-30,000)=	**Rs.60,000/-**
Future prospects @ 40% on the amount of Rs. 60,000/-	**Rs.24,000/-**
Total(60,000+24,000) =	**Rs. 84,000/-**
Adopting multiplier 16 considering the age of the of the victim	**Rs. 13,44,000/-**

General damages-	
Loss of Estate(Rs.15,000/-)	
Loss of Consortium(Rs.40,000/-)	**Rs. 70,000/-**
Funeral Expenses(Rs.15,000/-)	
Total compensation towards loss of dependency	**Rs.14,14,000/-**

Admittedly, the claimant Nos. 1, 2 and 3 have received the awarded amount of Rs. 9,60,000/-.

In view of the above, the appellants/claimant Nos. 1, 2 and 3 are entitled to get further compensation of Rs. 4,54,000/-. Besides, the claimants are also entitled to get interest @ 6% per annum on the awarded amount of money from the date of filing of the claim application till the awarded amount is deposited.

Therefore, on modification of the award passed by the learned Tribunal, respondent No. 1, the Oriental Insurance Company is directed to deposit a further amount of Rs. 4,54,000/- and interest @ 6% per annum on this further awarded amount from the date of filing of the claim application on 27th September 2018 by way of cheque with the learned Registrar General within six weeks from date.

If the aforesaid awarded amount of money is deposited by the Insurance Company with the learned Registrar General, the Registrar General shall release the amount to the claimants / appellant Nos. 1, 2 and 3 in equal share after being satisfied with their identity.

The appellant No. 1, Putul Santra is directed to invest the share of the appellant No. 2, Sandip Santra, a minor, in any fixed deposit account of any Nationalised Bank and this amount shall not be withdrawn till the appellant No. 2 attains majority.

With the aforesaid directions the appeal and connected application, if any, stand disposed of. No order as to costs.

Let a copy of this order be communicated 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, on priority basis.

(Rabindranath Samanta, J.)