IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

15.11.2022
SL No.29
Court No. 654
Ali

F.M.A. 1063 of 2022
IA No. CAN/1/2021

Salma Khatoon & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Rajan Roy
.....for the appellants-claimants.

Ms Gopa Das Mukherjee
....for the respondent No. 1-Insurance Co.

This appeal is preferred against the judgment and award dated 27 November 2019 passed by the learned Judge Motor Accident Claims Tribunal, Fast Track, 4th Court, 24-Parganas (North) in a MAC Case no. 16 of 2015 (3937 of 2014) granting compensation of Rs 3,61,000/-in favour of the claimants under Section 166 of Motor Vehicles Act, 1988.

The brief fact of the case is that on 14.9.2012 at about 12 hours while the deceased-victim was standing beside B.T road at Kamarhati More in front of 230 bus stand, at that time the offending vehicle bearing registration no. WB-23B/0253 (lorry), proceeding along B.T road with high-speed and in negligent manner, dashed the victim as a result of which he received severe injuries all over his body and was taken to hospital at Kamarhati where the attending doctor declared him dead. On account of sudden demise of the deceased-victim the claimants being the legal heirs filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 8,00,000/-alongwith interest.

Upon consideration of materials on record, evidence produced by the claimants the learned tribunal granted compensation of Rs 3,61,000/-in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award the appellants-claimants have preferred the present appeal.

Mr Amit Rajan Roy, learned advocate for the appellants-claimants submits that the appeal has been preferred solely on the ground of erroneous assessment of income of the deceased-victim by the learned tribunal to the extent of Rs.3,000/- per month. He further submits that at the time of accident the deceased-victim was a van-rickshaw puller and used to earn Rs. 6000 per month. However, he fairly submits that the claimants did not produce any documentary evidence in support of such income. Furthermore he submits that an amount equaling to 25% of the annual income of the deceased as well as general damages in terms of decision of Hon'ble Supreme Court passed in

National Insurance Company Limited versus Panay Sethi and others reported in ***2017 ACJ 2700*** is to be taken into account for assessment of fair compensation.

Ms Gopa Das Mukherjee, learned advocate for the respondent no.1-insurance company submits that the compensation should be assessed following observation of Hon'ble Supreme Court made in ***Pranay Sethi's case (supra).***

By order dated 5 August 2022 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with on the ground that he did not appear to contest the claim application before the learned tribunal and the claim application was disposed of *exparte* against him.

Having heard the learned advocates of both the sides, I now proceed to decide the issue raised in this appeal.

The learned tribunal has assessed the income of the deceased-victim to the tune of Rs. 3,000/- per month. Undisputedly the wife of the deceased-victim namely Salma Khatoon (PW1) did not produce any documentary evidence in support of profession and income of the deceased-victim. PW2, Sk Hafizul, who is also a rickshaw puller in the same locality of the deceased stated that deceased was a rickshaw puller, however, he did not state of income of the deceased. Be that as it may, considering the price index prevailing at the relevant point of time in the year 2012 and also bearing in mind catena of decisions of this court where the accident has taken place in the year 2012 an income of Rs. 4,000/- was adopted for assessment of fair compensation, I am inclined to consider the income of the deceased-victim @ Rs. 4000/- per month.

From the impugned judgment it is found that the deceased at the time of death was aged 45 years. Thus as per observation of Hon'ble Supreme Court made in ***Sarla Verma & Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298*** a multiplier of 13 is to be adopted as has been rightly held by the learned tribunal.

As the deceased was aged 45 years and rickshaw puller (self-employed) hence following observation of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** an amount equaling to 25% towards future prospect is to be taken into account.

Further the claimants are also entitled to general damages under the conventional heads namely loss of estate, loss of consortium and funeral expenses amounting to Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

In the case at hand the claimants are the wife and four children of the deceased victim and thus the total number of dependent family members is 5. Accordingly following the observation of the Hon'ble Supreme Court made in ***Sarla Verma's Case (supra)*** the deduction towards personal living expenses of the deceased should be 1/4th as has been rightly held by the learned tribunal.

Bearing in mind the aforesaid aspects the calculation of compensation is made hereunder.

Calculation of Compensation.

Monthly Income................................Rs.4,000/-
Annual Income.....(Rs.4000/- X 12)...Rs. 48,000/-
Add: Future Prospects @ 25% of total
Income.......................................Rs.12,000/-
Annual loss of Income........................Rs.60,000/-
Less: Deduction 1/4th of the Annual Income
(towards personal and living expenses)...... . Rs.15,000/-

Rs.45,000/-

Adopting multiplier 13 (Rs.45,000/- X 13).Rs.5,85,000/-
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.6,55,000/-

Thus the total compensation comes to Rs.6,55,000/-.

It is pertinent to note that the learned tribunal has awarded interest on the amount of compensation in the event of default to deposit the awarded within a specified period and failed to award any interest on the awarded sum. It is informed that the appellants-claimants have received the awarded sum granted by the learned tribunal. Thus the appellants-claimants are entitled to interest @ 6% per annum on the awarded sum of Rs.3,61,000/- from the date of filing of the claim application till deposit was made before the learned tribunal (if the interest is not paid).

Accordingly, respondent no.1- Oriental Insurance Company Limited is directed to deposit the balance amount of Rs.2,94,000/- together with interest @ 6% per annum from the date of filing of the claim application till deposit and the interest (if any) as indicated in the foregoing paragraph, by way of cheque with the learned Registrar General, High Court, Calcutta within a period of five weeks from date. The learned Registrar General upon deposit of the aforesaid amount shall release the said amount in favour of appellants-claimants in equal share after disbursing an amount of Rs.35,000/- towards spousal consortium to appellant no.1 (as Rs.5,000/- as already been received in terms of order of the learned tribunal) on satisfaction of their identity.

Appellant no.1, mother of the minors, being appellant nos. 4 & 5 shall receive the share of the minors on their behalf and shall deposit the said amount in fixed deposit scheme of any Nationalized Bank or Post Office till the attainment of the majority of the minors.

Accordingly the appeal stands allowed on contest against respondent no.1-Insurance Company and *exparte* against respondent no.2-Owner. The impugned judgment and award of the tribunal stands modified to the aforesaid extent. No order as to cost.

With the aforesaid direction the appeal stands disposed of.

All connected applications stand disposed of.

Interim order, if any, also stands vacated.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)