

26-08-2022
Item no.11
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.3661 of 2016
Rupa Sarkar & Anr.

-vs-

The Oriental Insurance Company Limited & Anr.
with

CAN No.1 of 2016
(Old CAN No.4045 of 2016)

Mr. Amit Ranjan Roy
...for the appellants/claimants

Ms. Sucharita Paul
...for the Respondent No.1,
the Oriental Insurance Company
Limited

Paper book filed in court be taken on record.

The appeal is taken up for hearing.

I have heard learned counsels appearing for the
respective parties at length.

Aggrieved by the compensation awarded by the
learned Judge, Motor Accident Claims Tribunal
(hereinafter be referred to as the Tribunal), 3rd Court,
Krishnanagar, Nadia in MACC Case No.51 of 2010 under
Section 166 of the Motor Vehicles Act as inadequate
compensation, the appellants/claimants have preferred
the instant appeal. By the impugned judgment the
learned Tribunal directed the Insurance Company to pay
compensation of Rs.21,37,500/- to the claimants.

The facts which are necessary for adjudication
may be summed up as under:

On September 25, 2009 at about 9:00 P.M while
Ananta @ Anant Sarkar, son of Ashim Sarkar of village

Jawgacha G.I.P, Colony Baraaranitala, P.S- Jawgacha, District- Howrah along with one Nema Chandra Ghosh was going by riding a motorcycle bearing No.WB12W-8359 along Burdwan-Durgapur Expressway, then one truck bearing No.WB-51/1400 which was coming at an excessive speed and driven in rash and negligent manner dashed both the motorcyclists. As a result of which they fell down from the motorcycle and died on the spot.

The claimants allege 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 because of the accident. The victim died at the age of 38 years. He was the owner of a business of electrical goods and used to earn Rs.2,71,000/- per year.

On the allegations of rash and negligent driving on the part of the driver of the offending vehicle, an FIR was lodged at Dadpur police station and the FIR was registered as Dadpur P.S. Case No.122 of 2009 dated September 25, 2009 under sections 279/304/427, IPC.

Because of the untimely and sudden demise of the victim, the claimants – Rupa Sarkar and Alok Sarkar who happen to be his widow and son and dependent on him – fell in acute financial crisis.

At the time of the accident, the offending vehicle was insured with the Oriental Insurance Company Limited.

On the facts as above, the claimants sought for compensation of Rs.28,91,667/- with interest thereon.

The Insurance Company contested the claim case by filing a written statement wherein it denied the averments and allegations as made in the claim application and sought for dismissal of the claim case.

Upon hearing the learned advocates for the parties and on consideration of the evidence adduced before it, the learned Tribunal partly allowed the claim application and directed the Insurance Company to pay the compensation as indicated above with interest at the rate of 8% p.a. from the date of filing of the claim case.

No appeal or cross-objection as well has been filed on behalf of the Insurance Company challenging the findings of the learned Tribunal. That being so, the findings recorded by the learned Tribunal remain uncontroverted. The uncontroverted findings as recorded by the learned Tribunal show 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 because of the accident. On analyzing the ocular evidence, especially the evidence of P.W.2 Aditya Das I find no reason to differ from the findings as recorded by the learned Tribunal. That being so, it stands proved that owing to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place. As the evidence on record shows, the victim died at the age of 38 years.

Admittedly, at the time of the accident, the offending vehicle was insured with the Oriental Insurance Company Limited.

The learned Tribunal on assessment of the income tax return submitted by the victim has held that the

yearly income of the deceased was Rs.2,08,220/-. While calculating the compensation, the learned Tribunal rounded off the figure at Rs.2,00,000/- only. According to learned counsel for the appellants, this inference arrived at by the learned Tribunal is erroneous. Learned counsel points out that the learned Tribunal did not calculate any compensation adding the count on future prospects of the victim. According to learned counsel future prospects @ 40% of the income of the deceased will be added since the deceased was a self-employed person and he used to carry on business. In such context, learned counsel has cited a decision in the case of ***National Insurance Company Limited v. Pranay Sethi*** reported in **(2017) 16 SCC 680** wherein the Hon'ble Apex Court has held at paragraph 59.4 that in case the deceased was self-employed, an addition of 40% of the established income should be warrant when the deceased was below the age of 40 years.

Per Contra, learned lawyer for the Insurance Company opposes the plea of the appellants seeking enhancement of compensation.

As it appears, the learned Tribunal adopted multiplier 16 to assess the compensation. The Hon'ble Apex Court in the case of ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*** reported in **(2009) 6 SCC 121**, has held at **paragraph 42**, if the victim died within the age group of 36-40 years, the multiplier 15 would be adopted. Therefore, learned Tribunal erred in adopting the multiplier 16, instead of 15.

It also appears from the judgement of the learned Tribunal that it awarded compensation on the count of general damages to the extent of Rs.9,500/-, instead of

Rs.70,000/-. The Hon’ble Supreme Court in **Pranay Sethi** (supra) at paragraph 59.8 has held that reasonable figures of 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. Therefore, the claimants are entitled to get Rs.70,000/- in the above respect, instead of Rs.9,500/-. On such score, the award passed by the learned Tribunal requires modification.

In view of the above, the award passed by the learned Tribunal dated May 4, 2015 needs modification in the following manner:

Yearly income	= Rs.2,08,220/-
Future Prospects @ 40%	=(+) Rs.83,288/-
Total	= Rs.2,91,508/-
Deduction to the extent of 1/3rd	=(-) Rs.97,170/-
Total Annual Income	= Rs.1,94,338/-
Adopting Multiplier 15 considering the age of the victim of 38 years	
Rs.1,94,338/-x15	= Rs.29,15,070/-
General damages	
Loss of estate @ Rs.15,000/-	
Loss of spousal consortium @ Rs.40,000/-	
Funeral expenses @ Rs.15,000/-	
Total	=Rs.70,000/-
Total compensation towards loss of dependency comes to	= Rs.29,85,070/-

As mandated by the Hon’ble Apex Court in **Pranay Sethi** (supra), spousal consortium of Rs.40,000/- is admissible to the widow of the victim. However, learned counsel for the appellants submits that he has no objection if this amount is equally disbursed between the claimants.

Therefore, in view of the above, the appellants are entitled to get Rs.29,85,070/- as total compensation. Admittedly, the appellants have already received a sum of Rs.21,37,500/- as awarded by the learned Tribunal. That being so, they are now entitled to get further amount of Rs.8,47,570/- (Rs.29,85,070/- – Rs.21,37,500/-). Besides, they are also entitled to get interest at the rate of 6% p.a. on the further awarded amount of money from the date of filing of the claim application.

Accordingly, the respondent No.1, the Oriental Insurance Company Limited, is directed to deposit the amount of Rs.8,47,570/- with interest at the rate of 6% p.a. on this amount from the date of filing of the claim application by way of cheque in favour of the learned Registrar General, High Court, Calcutta with his office within six weeks from date.

Once the deposit as above is made, the learned Registrar General shall release the amount to the appellants/claimants in equal share as expeditiously as possible after being satisfied with their identity.

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

Let a copy of this order be sent to the learned Tribunal for information.

Certified copy of this order, if applied for, shall be given to the parties upon compliance with all requisite formalities.

[Rabindranath Samanta, J]

