Ct. No. 14

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F.M.A.T. 230 of 2013

Sayera Bibi & Ors.
-Versus-
Oriental Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik ...**For the Appellants/ Claimants**

Ms. Gopa Das Mukherjee ...**For the Respondent No. 1, Oriental Insurance Company Limited**

On consent of the learned Lawyers appearing for the parties the appeal is taken up for final hearing.

Aggrieved by the compensation awarded by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Bankura (hereinafter referred to as the learned Tribunal), in MACC No. 30 of 2011 arising out of MACC No.72 of 2009, as inadequate compensation, the appellants have preferred the instant appeal. By the impugned judgment dated 23rd April, 2012, the learned Tribunal directed the respondent No. 1, Oriental Insurance Company Limited to pay compensation of Rs. 1,50,000/- to the claimants within 30 days from the date of receiving copy of the judgment, failing which interest @ 8% per annum would carry on the entire compensation amount.

The facts which are emanating from the claim application under Section 166 of the Motor Vehicles Act and which are necessary for adjudication may be adumbrated as under :

On 6th June 2009 at about 12.00 noon, Abdul @ Rahaman Sekh, son of late Rahim Sekh of Village – Kharikasuli, P.S. Bishnupur, District – Bankura, was returning home by pulling his rickshaw on Bishnupur –

Midnapore main metal road. While he was near Turki Ashram, one motorcycle bearing No. WB-68F/1039 which was proceeding towards the same direction dashed the rickshaw-puller Abdul @ Rahaman Sekh. As a result of which he fell down from his rickshaw and sustained serious bleeding injuries on his person. He was shifted to S.D. Hospital, Bishnupur. Therefrom he was referred to B.S.M.C. & Hospital where he died on the same day.

The accident took place due to rash and negligent driving on the part of the rider of the said offending motorcycle and the victim died because of the accident. He died at the age of 45 years. Owing to rash and negligent driving on the part of the rider of the aforesaid motorcycle, one Bishnupur Police Station Case No. 63 of 2009 dated 7th June 2009 under Sections 279/304A/427 of the Indian Penal Code was registered for investigation.

Owing to sudden demise of the victim, the claimants who happen to be his widow, sons and dependants fell in acute financial crisis.

Under the aforesaid facts, the claimants sought for compensation.

Upon hearing the learned Lawyers appearing for the parties and on consideration of the evidence on record, the learned Tribunal by the impugned judgment directed the Insurance Company to pay compensation as indicated above.

Learned Lawyer appearing for the appellants submits that the learned Tribunal awarded the compensation without recording any reason to arrive at the inference.

Learned Lawyer submits that if the annual income of the deceased and other factors like deduction of his personal and living expenses and adopting the appropriate multiplier are taken into consideration, the compensation as awarded by the learned Tribunal should be enhanced.

However, learned Lawyer appearing for the respondent No. 1, Oriental Insurance Company submits that the learned Tribunal was justified in awarding compensation and the compensation does not require any enhancement.

Though the claimants asserted in the claim application that the victim died at the age of 45 years, but the learned Tribunal on assessment of the evidence on record held that the deceased died at the age of 65 years. However, on assessment of the evidence, especially the postmortem examination report, I find that the victim died at the age of 65 years.

It is not in dispute that the victim was a rickshaw puller. Considering his vocation as rickshaw puller and in view of the catena of decisions rendered by this Court, the monthly income of a rickshaw puller may be assessed at Rs.3,000/- per month.

The victim died leaving behind 10 dependants. As held by the Hon'ble Apex Court in the case of ***Sarla Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121,** the deduction to the extent of $1/5^{th}$ should be towards personal and living expenses of the deceased since he died leaving behind him 10 dependants at the time of his death. Since the victim died at the age of 65 years, multiplier 7 will be adopted in view of the observations of the Hon'ble Apex Court at paragraph 42 in ***Sarla Verma (Supra)***.

Besides, in view of the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680** conventional figures of general damages will be Rs. 15,000/- for loss of estate, Rs. 40,000/- for loss of consortium and Rs.15,000/- for funeral expenses. But, the impugned judgement shows that the learned Tribunal while calculating compensation did not take into consideration the aforesaid conventional figures.

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

Monthly income =	**Rs.**	**3,000/-**
Annual Income to be as (Rs.3,000 X 12) =	**Rs.**	**36,000/-**
1/5th deduction on account of Personal & Living expenses (Rs.36,000 – Rs.7,200)	**Rs.**	**28,800/-**
Adopting multiplier 7 considering the age of the victim 65 years (7 X Rs.28,800)	**Rs.**	**2,01,600/-**
General damages- **Loss of Estate(Rs.15,000/-)** **Loss of Consortium(Rs.40,000/-)** **Funeral Expenses(Rs.15,000/-)**	**Rs.**	**70,000/-**
Total compensation towards loss of dependency	**Rs.**	**2,71,600/-**

Admittedly, the claimants have received the awarded amount of Rs. 1,50,000/- from the Insurance Company as awarded by the learned Tribunal.

Therefore, the claimants are now entitled to get further sum of Rs. 1,21,600/- as compensation.

Accordingly, on modification of the award passed by the learned Tribunal, respondent No. 1, Oriental Insurance Company Limited is directed to deposit a further sum of Rs. 1,21,600/- and interest @ 6% per annum on this further awarded amount of Rs. 1,21,600/- from the date of filing of the claim application by way of cheque in favour of the learned Registrar General with his office within six weeks from date.

After the aforesaid awarded amount of money is deposited by the Insurance Company with the learned Registrar General, the learned Registrar General shall release the amount to the claimants/appellants in equal share after being satisfied with their identity.

With the aforesaid 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.

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.)