10.11.2022
SL No. 23
Court No. 654
Ali

<u>F.M.A. 816 of 2021</u>

Puspo Hembroom and Others
versus
The Oriental Insurance Company Ltd. and Anr.

Mr. Subir Banerjee

Mr. Sandip Bandyopadhyay
Mrs. R. Basu Roy
...for the appellants-claimants.

Mr. Ananda Gopal Mukherjee
...for the respondents-Insurance Co.

This appeal is directed against the judgement and award dated 25th September, 2020 passed by Additional District Judge cum Judge, Motor Accident Claims Tribunal, F.T.C.-II, Islampur, Uttar Dinajpur in MAC case no. 38 of 2019 granting compensation in favour of the claimants to the tune of Rs. 6,74,800/-along with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 5.02.2019 at about 3:30 PM while the deceased with his van-rickshaw loaded cement was going towards Aliganj village through the NH-31 for delivery of the same and when he reached near Sealtore Road para, a crane bearing No. WB-74-AS/7710 which was proceeding towards Kishanganj side from Islampur side at a very high speed and in a very reckless and negligent manner dashed the van rickshaw of the victim resulting in multiple grievous bleeding injuries on his person and died on the spot. On account of sudden demise of the deceased, the appellants-claimants being the legal heirs of the deceased-victim filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 10,00,000/- alongwith interest.

The learned tribunal upon consideration of the materials on record and the evidence adduced by the claimants, both oral as well as documentary, allowed compensation in favour of the claimants to the tune of Rs. 6,74,800/-along with interest @ 6% per annum from the date of filing of the claim application till the date of judgement.

Mr. Subir Banerjee, learned advocate for the appellants-claimants submits that the present appeal has been preferred by the claimants for enhancement of the compensation amount solely on the ground of erroneous assessment of income of the deceased by the learned tribunal to the extent of Rs. 3,000/- per month. He further submits that undisputedly at the time of accident in the year 2019, the deceased-victim was a van-rickshaw puller as per evidence on record and therefore, considering the price index prevailing at the relevant period, the income ought to have been assessed @ Rs. 6,500/-. He fairly submits that the claimants failed to place any documentary evidence in support of the income of the deceased.

Furthermore, he submits that the deceased-victim at the time of accident was married and there were 6(six) dependents and therefore, following the decision of the Hon'ble Supreme Court passed in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121*** the deduction towards personal and living expenses of the deceased should have been calculated @ $1/4^{th}$ instead of $1/5^{th}$.

He further submits that the amount of interest should have been granted from the date of filing of the application till realization of the amount, however, the learned tribunal erred in allowing such interest from the date of filing of the application till the date of judgment which is required to be modified.

In the light of his aforesaid submissions, he prayed for enhancement of the compensation amount.

Mr. Ananda Gopal Mukherjee, in reply to the contention raised on behalf of the appellants-claimants submits that the compensation is to be calculated following the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 (16) SCC 680.***

As far as the income is concerned, the claimants Manatosh Sarkar (PW3), who deposed in his evidence-in-chief that the deceased-victim was a labour (van-rickshaw puller) of his Hardware Store and he used to pay daily wages of Rs. 300/- to the deceased-victim. In the cross-examination, he deposed that he cannot show any documents that the deceased-victim used to carry article from his shop by his rickshaw van. Though PW3 has deposed in his evidence that he used to pay Rs. 300/- per day to the deceased-victim but he has failed to produce any document showing such payment. Learned tribunal has rightly discarded such evidence. Be that as it may, considering that the accident has taken place in the year 2019 as well as the price index prevailing during the relevant point of time and bearing in mind catena of decisions of this court accepting an income of Rs. 5,000/- in the event of accident taking place after 2015, I am inclined to consider the income of the deceased-victim to the tune of Rs. 5,000/- per month.

With regard to the deduction towards personal and leaving expenses of the deceased, it is found that the learned tribunal has deducted $1/5^{th}$ of the annual income of the deceased towards personal and living expenses of the deceased. As per the decision of the Hon'ble Supreme Court passed in ***Sarla Verma's case (supra)*** where the deceased is married and the number of dependents is in between 4 to 6, the deduction towards personal and living expenses of the deceased-victim should be $1/4^{th}$. In the case at hand the number of dependents of the deceased is 6 (six) and hence an amount equaling to $1/4^{th}$ of the annual income of the deceased should be deducted towards personal and living expenses of the deceased.

Further it is found from the impugned judgment that the interest has been granted from the date of filing of the claim application till the date of judgment. Be that as it may, the interest should have been granted from the date of filing of the claim application till actual realization of the amount and hence the same needs to be modified.

As per the Adhar card the date of birth of the deceased is 01.01.1981. Thus on the date of accident the deceased was aged 38 years 1 month 4 days. Hence, the multiplier as per ***Sarla Verma's Case (supra)*** would be 15 as has been rightly held by the learned tribunal.

The deceased at the time of accident was self-employed (van rickshaw puller) and aged more than 38 years but below 40 years and therefore as per observation of Hon'ble Supreme Court in ***Pranay Sethi's Case (supra)*** an amount equaling to 40% of the annual income shall be taken into consideration for calculation of compensation as has been rightly held by the learned tribunal.

The general damages as per ***Pranay Sethi's Case (supra)*** under conventional heads namely loss of estate, loss of consortium and funeral expenses would be 15,000/-, 40,000/- and Rs. 15,000/- respectively.

In view of the above, the calculation of compensation is made hereunder:

Calculation of Compensation

Income.................................... Rs. 5,000/-
Annual income (5,000 X 12) ...Rs. 60,000/-
Add: future prospect 40% ....Rs. 24,000/-
Rs. 84,000/-
Less: Deduction 1/4th .... Rs. 21,000/-
(Towards personal and living expenses)
Total.................Rs. 63,000/-
Adopting Multiplier 15 (63,000/- X 15)..Rs.9,45,000/-
Add: General Damage Rs. 70,000/-
Loss of estate.....Rs. 15,000/-
Loss of Consortium....Rs. 40,000/-
Funeral expenses........Rs. 15,000/-
Rs. 10,15,000/-

Thus, the total compensation amount comes to Rs 10,15,000/-. It is informed that the claimants have received the amount of compensation of Rs. 6,74,800/- granted by the learned tribunal alongwith interest from the date of filing of the claim application till the date of judgment.

The order of the learned tribunal is modified to the extent that the claimants are entitled to further interest @ 6% on the amount of Rs. 6,74,800/- from the date of filing of the claim application till realization. Thus the claimants will receive further interest @ 6% on the amount of Rs. 6,74,800/- from the date of judgment till the date the deposit of the said amount made before the learned tribunal.

The respondent No.1-Oriental Insurance Company Ltd. is directed to pay the balance amount of compensation of Rs. 3,40,200/- alongwith interest @ 6% p.a. from the date of filing of the claim application till the deposit of the said amount and further amount of interest @ 6% on the amount of Rs. 6,74,800/- from the date of judgment till the date the deposit of the said amount made before the learned tribunal. The aforesaid amount shall be deposited before the learned Registrar General, High Court, Calcutta by way of cheque within a period of four weeks.

The learned Registrar General, High Court, Calcutta shall disburse the amount in favour of the appellants-claimants in the same proportion mentioned in the order of the learned tribunal upon satisfaction of the identity of the claimants.

Appellant no.1, being the mother and natural guardian of minor claimants namely appellant nos.2 to 5, shall receive the share of the minors and shall deposit the same in fixed deposit scheme of any Nationalized Bank or Post Office till the minors attain majority.

The order of the learned tribunal accordingly stands modified to the aforesaid extent.

With the aforesaid observations, the appeal is disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on complying all necessary legal formalities.

(Bivas Pattanayak J.)