IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

13.12.2022
SL No.56
Court No. 654
Ali

F.M.A.T. 388 of 2019

Anjana Saha
Vs.
ICICI Lombard General Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
....for the appellant-claimant.
Mr. Mr. Saswata Bhattacharyya
.....for the respondent-Insurance Co.

This appeal is directed against the judgment and award dated 2nd August 2018 passed by learned Judge, Motor Accident Claims Tribunal, 1st court, Howrah in M.A.C. case no. 3200 of 2014 granting compensation in favour of the claimant to the tune of Rs. 2,54,500/- alongwith interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 16th April 2013 at about 3.00 AM while the victim was travelling by the offending vehicle bearing registration no. WB-23C/6034 (mini truck) through NH6 at that time when the said vehicle reached near Chamrail petrol pump it capsized due to rash and negligent driving of the offending vehicle and it dashed another vehicle beside the road with great force, as a result of which the victim sustained severe bleeding injuries on his chest, waist and head and he succumbed to his injuries and died. On

account of sudden demise of the victim the claimant being the mother filed application for compensation under Section 166 of the Motor Vehicles Act,1988.
Upon considering the materials on record and the evidence, both oral and documentary, adduced on behalf of the claimant the learned tribunal granted compensation in favour of the claimant to the tune of Rs. 2,54,500/- alongwith interest @ 6% per annum from the date of filing of the claim application till realization of the amount.
Being aggrieved by and dissatisfied with the impugned judgment and award the claimant has preferred the present appeal.

Mr Amit Ranjan Roy, learned advocate for appellant-claimant submits that the learned tribunal erroneously considered notional income of Rs. 3000/-per month of the deceased without taking into account the Income Tax Return for the assessment year 2011-12 furnished by the claimant showing the income of the deceased Rs.1,65,900/-. He further submits that as per the settled proposition the income of the deceased disclosed in the Income Tax Return should be accepted for computation of compensation amount as the same is a statutory document and in support of his contention he relied on the decision of Hon'ble Supreme Court passed ***in Kalpanaraj & Ors versus Tamil Nadu State Transport*** reported in

(2015) 2 SCC 764. He further submits relying on the decision of Hon'ble Supreme court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 (4) T.A.C 673(S.C),*** that the claimant is also entitled to an additional amount of 40% of the annual income of the deceased towards future prospect which is also not been considered by the learned tribunal. Further general damages under the conventional heads of loss of estate and funeral expenses of Rs.30,000/-are also to be taken into account.

Furthermore he submits that the learned tribunal erred in considering the age of the mother for adopting multiplier whereas it ought to have considered the age of the deceased for adopting multiplier. In his usual fairness Mr Roy, learned advocate for appellant-claimant indicated that as the deceased died bachelor hence in view of observation of Hon'ble Supreme Court passed in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in (***2009) 6 SCC 121*** the deduction towards personal and living expenses of the deceased should be ½ instead of 1/3rd.

In the light of his aforesaid submissions he prayed for enhancement and modification of the impugned judgment and award passed by the learned tribunal.

In reply to the aforesaid contentions raised on behalf of the appellant-claimant, Mr Saswata Bhattacharya, learned advocate for respondent no.1-insurance company at the very outset concedes to the submissions advanced on behalf of the appellant-claimant with regard to future prospect and multiplier. However he strenuously argues that the income asserted by the appellant-claimant relying on the income disclosed for the assessment year 2011-12 should not be considered in view of the fact that the claimant failed to produce any documents pertaining to the business of the deceased and therefore the income of the deceased determined by the learned tribunal should be affirmed.

By an order dated 7th November, 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 contest the claim application and the case was disposed of *exparte* against him.

Having heard the learned advocates for both the sides, I now proceed to decide the issues involved in the appeal.

At the foremost, with regard to income of the deceased it is found that the learned tribunal has considered the annual income of the deceased of Rs.36,000/- and discarded income disclosed in the

Income tax Return on the ground that the petitioner failed to produce the books of account and paper pertaining to business of the deceased. The Hon'ble Supreme Court in ***Kalpanaraj' case (supra)*** observed as follows:-

> *"It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the income tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return……..".*

It is fact that save and except the Income Tax Returns the claimant has not produced any other document relating to business of the deceased. Be that as it may, bearing in mind the aforesaid observation of Hon'ble court, the Income Tax Returns submitted by the deceased can be taken into account for determining the income of the deceased. In order to establish the income of the deceased the claimant adduced the evidence of one Nilesh Kumar (PW3) of the Income Tax Department who produced the attested copy of Income Tax Return filed by the deceased from 2008 to 2012 **(Exhibit 13)**. From the aforesaid copy of income tax returns it is found that the deceased filed income tax return for the assessment year 2012-13 on 31.3.2013 just prior to his death. PW3 deposed that the return for the assessment year 2012-13 is not valid return due to delay. Accordingly for the reasons as above the same cannot be accepted. Be that as it may, it is found that the Income Tax Return for assessment year 2011-12 which is also filed prior to the death of the deceased has also been produced before the court. The gross income of the deceased victim disclosed in the said Income Tax Return for the assessment year 2011-12 is Rs.1,65,900/-and the tax paid is Rs.610/-. Therefore the actual income of the deceased should be gross income of Rs.1,65,900/- less tax paid of Rs.610/- which comes to Rs.1,65,290/-. Thus following the aforesaid observation of the Hon'ble Supreme Court the income of the deceased disclosed in the Income Tax Return for assessment year 2011-2012 should be taken into consideration.

It is further found that the learned tribunal did not grant any amount towards future prospect. Following the decision of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** as the deceased at the time of accident was 38 years of age and was self-employed hence an amount equalling to 40% of the annual income of the deceased should be taken into account towards future prospect.

The learned tribunal has considered the age of the mother for adopting multiplier of 8. The Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** observed that age of the deceased should be the basis for adopting multiplier. Following such observation in the decision passed in ***Royal***

Sundaram Alliance Insurance Co. Ltd versus Mandala Yadagari Goud and Others reported in ***(2019) 5 SCC 554*** the Hon'ble Supreme Court observed that it is the age of deceased which has to be taken into account and not the age of the dependants. Bearing in mind such observations of the Hon'ble Supreme Court and considering the age of the deceased to be 38 years the multiplier to be adopted in the present case should be 15.

As indicated by learned advocate for appellants claimants that the deduction towards personal and living expenses should be ½ instead of 1/3rd , I am of the opinion that in view of decision of Hon'ble Supreme Court passed in ***Sarla Verma's case (supra)*** as the deceased died bachelor hence an amount equalling to ½ of the annual income of the deceased should be deducted towards personal and living expenses of the deceased.

Further the claimant is also entitled to general damages under the conventional heads of funeral expense and loss of estate of Rs.15,000/- each.

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

Calculation of compensation

Annual Income..Rs 1,65,290/-
Add: Future Prospects @ 40% of total Income..Rs.66,116/-
Annual loss of Income..........................Rs.2,31,406/-
Less: Deduction ½ of the Annual Income
towards personal and living expenses.... Rs.1,15,703/-
Rs.1,15,703/-

Adopting multiplier 15 (Rs.1,15,703/- X 15)..Rs.17,35,545/-
Add: General Damages....................................Rs.30,000/-
Loss of estate............Rs.15,000/-
Funeral Expenses.......Rs.15,000/-
Total Compensation...............................Rs.17,65,545/-

Thus the compensation amount is calculated to Rs. 17,65,544/-.It is informed that the appellant claimant has already received Rs.2,54,500/- alongwith interest thereon as directed by the learned tribunal. Accordingly the appellant-claimant is entitled to balance amount of Rs 15,11,045/- together with interest @ 6% per annum from the date of filing of the claim application (i.e 22.12.2014) till deposit.

Respondent no.1-Insurance Company is directed to deposit the balance amount alongwith the interest as indicated above by way of cheque with the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the same in favour of appellant-claimant on satisfaction of her identity.

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

Appellant-claimant is directed to deposit *ad valorem* Court Fees on the enhanced amount of compensation, if not already paid.

With the aforesaid direction the appeal and the connected application, if any, stands disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)