Court No.654
Item no. 1
Sk/ali
12.09.2022

F.M.A 1110 of 2021

In the matter of:-

Smt. Jharnarani Bagdi & Ors.

versus

The Cholamandalam General Insurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mandal

.........for the appellants

Mr. Debanjan Mukherjee

...for respondent-Insurance Co.

This appeal has been preferred by the claimants against the judgement and award dated 17th September, 2019, passed by the Learned Judge, Motor Accidents Claims Tribunal, 2nd Court, Bankura, in MAC Case No. 73 of 2017 (116 of 2016) under Section 166 of the Motor Vehicles Act granting award of compensation in favour of the appellants-claimants to the tune of Rs.3,64,500/- and Rs. 5,000/-towards loss of consortium in favour of claimant no.1 (wife of the deceased).

The brief fact of the case is that on 08.10.2015, at about 1:30 p.m. while the victim Uttam Bagdi was travelling in the offending vehicle bearing registration no. WB 67A/0652 (bus) as a passenger, the offending vehicle suddenly capsized in the nearby paddy field resulting in injuries to several persons including the victim. Due to the injuries the victim (deceased) succumbed at the spot. The appellants-claimants being the legal heirs of the deceased(victim) filed an application under Section 166 of the Motor Vehicles Act, 1988, for compensation to the tune of Rs.4,00,000/-.

Upon considering the materials on record and the evidence adduced on behalf of the claimants the learned tribunal granted award of compensation in favour of the appellants/ claimants to the tune of Rs.3,64,500/- and Rs. 5,000/-towards loss of consortium in favour of claimant no.1 (wife of the deceased).

Being aggrieved by and dissatisfied with the aforesaid quantum of award of compensation the appellants-claimants have preferred the present appeal.

Mr. Jayanta Kumar Mandal, learned advocate appearing on behalf of appellants-claimants submitted that the income of the deceased should have been considered @ Rs.5,000/- per month as the accident took place in the year 2015. In support of his contention he relied on the decision of this Hon'ble Court passed in ***Smt. Manju Bouri and Others versus National Insurance Co. Ltd. And Another*** reported in **2021 (4) T.A.C 403 (Cal.)** and ***Beauty Bala @ Buti Bala (Paul) and Another versus Shriram General Insurance Co. Ltd. and Another*** reported in ***2022 (2) T.A.C 249 (Cal)***. He fairly submitted that though the tribunal has adopted multiplier 15 yet as per the observation of the Hon'ble Supreme Court made in ***Sarla Verma (Smt) and Others***

versus Delhi Transport Corporation and Another reported in ***(2009) 6 SCC 121*** the multiplier should be 14. Further, the deduction towards personal living expenses should be 1/4th as the number of family members of the deceased is more than 4 but less than 6. Furthermore, he submitted that the appellants-claimants are entitled to general damages as observed by the Hon'ble Supreme Court in its decision passed in ***National Insurance Company versus Pranay Sethi and others*** reported in ***2017(4)T.A.C 673 (S.C).*** He further submitted that an amount equaling to 25% of the annual income should also be taken into consideration towards future prospect which has not been assessed by the learned tribunal. In the light of the aforesaid he prayed for enhancement of award of compensation.

Mr. Debanjan Mukherjee, learned advocate appearing on behalf of the respondent no. 1- Insurance Company submitted that the observations made by the Hon'ble Supreme Court in ***Pranay Sethi (supra)*** should be followed for assessing the compensation.

None appears on behalf of respondent no.2-owner.

It is found that by order dated 22.06.2022, the service of notice upon the respondent no.2 was dispensed with on the ground that the said respondent did not contest the claim application before the tribunal despite the service of notice upon him.

From the impugned judgement and order the learned tribunal has found the age of the deceased (victim) at the time of accident to be 45 years basing on the certified true copy of post mortem report **(Exhibit-7)** of the victim. Therefore, following the observations of the Hon'ble Supreme Court made in ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)*** as on the date of accident the deceased was 45 years of age hence, the multiplier to be applied for assessing the compensation in the present case should be 14. Thus, it is found that the learned tribunal erred in applying multiplier 15 in calculating the award of compensation.

With regard to the income of the deceased the learned tribunal has considered the income of the deceased notionally @ Rs.3,000/- per month as no document was produced. Be that as it may, though no documents were produced before the learned tribunal yet in all fitness of things and having regard to the price index prevalent during the material point of time in the year 2015, the income of deceased should be assessed at Rs. 5,000/- per month as has also been considered in the decision of this court in ***Smt. Manju Bouri (supra)*** and ***Beauty Bala @ Buti Bala (Paul) (supra)*** cited on behalf of the appellants-claimants.

Further, the learned tribunal did not take into account the aspect of future prospect of the deceased. The

Hon'ble Supreme Court in ***Pranay Sethi*** **(supra)** observed that in case the deceased was self employed or on a fixed salary an addition of 25% of the annual income is to be added as future prospect where the deceased was aged between 40 and 50 years. In the case at hand the deceased was a day labour and hence an addition of 25% of the annual income is to be added as future prospect.

With regard to general damages it is found that the learned tribunal has assessed compensation under the conventional heads namely funeral expenses, loss of consortium and loss of estate to the tune of Rs.2,000/-, Rs. 5,000/- and Rs.2,500/- respectively. However, as per the observation of the Hon'ble Supreme Court made in ***Pranay Sethi (supra)*** the general damages including loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. Hence, the appellants-claimants are entitled to the aforesaid amount.

As far as deduction towards personal living expenses of the deceased are concerned the Hon'ble Supreme Court in ***Sarla Verma (supra)*** has observed that where the deceased was married and the number of dependent family members are 2 to 3 the deduction should be 1/3rd. In the case at hand appellant no. 1 to 3 being the wife, son and mother of deceased respectively are the dependent family members of the deceased whereas appellant no. 4 & 5 is married daughter of the deceased. Hence as first three are the dependent family members, 1/3rd deduction should be made towards personal living expenses as has been rightly made by the learned tribunal.

In the aforesaid backdrop the compensation award is calculated as follows:-

Calculation of compensation

Monthly Income.....................................Rs.5,000/-
Annual Income.........(Rs.5,000/-x 12).........Rs.60,000/-
Add: 25% of Annual Income
towards Future prospect................Rs.15,000/-
Annual Loss of Income..........................Rs.75,000/-
Less: Deduction of 1/3rd of the annual income
Towards personal living expenses......Rs.25,000/-
Rs. 50,000/-
Adopting multiplier 14 (Rs 50,000/-X 14)...Rs,7,00,000/-
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.7,70,000/-

It is submitted on behalf of the appellants-claimants that they have already received an amount of Rs. 3,69,500/- including interest as per order of the learned tribunal. It is further found that the learned tribunal has assessed compensation under the conventional heads namely funeral expenses, loss of consortium and loss of estate to the tune of Rs.2,000/-, Rs. 5,000/- and

Rs.2,500/- respectively. Hence, the appellants-claimants are entitled to a further amount of compensation equaling to Rs. 4,00,500/-(Rs.7,70,000 less Rs.3,69,500/-). Further, the appellants-claimants are also entitled to interest at the rate of 6% per annum on the said sum from the date of filing of the claim application till the date of realization.

Accordingly, the appeal succeeds and is allowed on contest against the respondent no.1-Insurance Company and *exparte* against respondent no.2-owner. The impugned award of the learned tribunal stands modified to the aforesaid extent.

The respondent no.1-Cholamandalam MS General Insurance Co. Ltd. is directed to deposit a sum of Rs. 4,00,500/- along with interest @ 6% per annum on the said amount from the date of filing of the claim application till the deposit, by way of cheque with the Learned Registrar General, High Court, Calcutta within a period of five weeks from date.

On deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants in equal share after releasing an amount of Rs.35,000/- to the widow namely appellant no.1 as spousal consortium, upon being satisfied with the identity of the appellants-claimants.

The appeal is accordingly disposed of, with the aforesaid direction. No order as to costs.

All connected applications stand disposed of.

Interim order, if any stands vacated.

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

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Bivas Pattanayak, J)