15.09.2022
SL No. 7
Court No. 654
Ali

F.M.A. 2402 of 2014
IA No: CAN 2/2015 (Old No.: CAN 914/2015)

National Insurance Co. Ltd.
versus
Sumana Murmu & Ors.

Mr. Parimal Kumar Pahari
...for the appellant.

Mr. Jayanta Kumar Mondal
...for the respondent-Claimants.

This appeal is directed against the judgement and award passed on 30th of November, 2013 by learned Judge, Motor Accident Claims Tribunal, 5th court, Paschim Medinipur in MAC case no. 184 of 2012 granting compensation in favour of the claimant's to the tune of Rs. 3,64,000/-along with interest under section 166 of the motor vehicles act.

The brief fact of the case is that on 5.01.2012 at about 5:30 PM while the victim was proceeding through the left side of NH 60 the offending vehicle in the rash and negligent manner dashed the victim with great force from behind as a result of which he sustained grievous injuries and was taken to the hospital where he succumbed to his injuries. The claimants being the legal heirs filed application under section 166 of the Motor Vehicles Act, 1988 for compensation.

Upon consideration of materials on record and the evidence the learned tribunal allowed compensation in favour of the claimants to the tune of Rs. 3,64,000/-along with interest @ 9% per annum on the amount of compensation from the date of filing of the claim application till its realization.

Being aggrieved by and dissatisfied with the impugned judgement and award the appellant-insurance company has filed the present appeal.

Mr Parimal Kumar Pahari, learned advocate appearing on behalf of the appellant-insurance company submits that the present appeal has been filed challenging involvement of the offending vehicle as well as the quantum of compensation amount granted in favour of the claimants. He submits that the appellant insurance company by adducing the evidence of the police authority as well as producing receipt of the dead body challan marked **Exhibit D** could prove that the offending vehicle was a Maruti van and not an Indica car as has been described in the FIR. He further submits that the delay in lodgment of the FIR has resulted in exaggerations and conjectures and would certainly defeat the claim of claimants.

As regards quantum of compensation he fairly submits that the learned tribunal has wrongly adopted multiplier 13 for calculating the compensation amount which as per the observation of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121*** should be 14. He however raised objection to the grant of medical expenditure to the tune of Rs. 15,000/-as those amount has not been proved by cogent medical bills. He further submits that the amount of compensation of Rs. 25,000/- on account of loss of love and affection is of no basis. In the aforesaid backdrop prays for modification of the quantum of compensation amount granted in favour of the claimants by the learned tribunal.

In reply to the aforesaid contentions raised on behalf of the appellant- insurance company, Mr Jayanta Kumar Mondal, learned advocate for the respondents-claimants at the very outset submits that the delay in lodging the FIR has been aptly explained in the contents of the written complaint and further more delay *per se* does not make the case of the claimants suspicious and in support of his contention he relied on the decision of this Hon'ble Court passed in ***National Insurance Company Limited versus Smt Pratima Barik and Another*** reported in ***2017 (2) TAC 466 (Cal).*** He further submits that as per the written complaint as well as the charge sheet and the seizure list the involvement of the offending vehicle is transparently clear and the learned tribunal has rightly decided of the involvement of the vehicle in the said accident. Furthermore he submits that the medical expenditure as well as the compensation on account of loss of love and affection should also be affirmed in the interest of justice.

In the aforesaid backdrop he prays for dismissal of the appeal.

As the respondent no.5-owner did not contest the claim application and the matter was disposed of exparte against him hence service of notice of appeal upon him is dispensed with.

The appellant has thrown challenge to the involvement of the vehicle on twofold grounds, *firstly* relying on the evidence of the police authority and the dead body challan the offending vehicle was a Maruti van and not an Indica car as has been described in the FIR and *secondly* on the aspect of delay in lodging of the FIR. On going through the impugned judgement it appears that the learned tribunal relying on the FIR, charge sheet as well as seizure list precisely came to this conclusion that the offending vehicle (Indica Car) was involved in the said accident. The appellant-insurance company by adducing the evidence of Anukul Jana, SI of Police brought on record the attested copy of the dead body receipt challan **(Exhibit D).** Mr Pahari, learned advocate for the appellant relying on such document tried to impress upon the court that there is discrepancy with regard to the involvement of the vehicle. On perusal of **Exhibit D** it appears that the complainant has described the vehicle to be a Maruti van. Save and except the aforesaid document in all other documents produced by the claimants namely the written complaint, charge sheet, seizure list the involvement of the offending vehicle Indica car is palpably reflecting from such document. Accordingly such ground falls short of merit. As far as the delay in lodging of the FIR is concerned on going through the written complaint it is found that the delay has been explained. Further I find substance in the submission of Mr Mondal learned advocate for the respondents-claimants relying on the decision of ***Smt Pratima Barick (supra)*** that delay *per se* could not defeat the claim of the claimant.

Now the aspect of quantum of compensation amount is taken up for consideration.

The learned tribunal has adopted multiplier 13 in calculating the amount of compensation. Mr Pahari, learned advocate for the appellant-insurance company has rightly pointed out that as per the observation of the Hon'ble Supreme Court in ***Sarla Verma's*** case the multiplier to be adopted for calculation of compensation should be 14 as age of the deceased at the relevant point of time was 43 years.

It is a fact that no such documents in respect of medical expenditure has not been produced before the learned tribunal. In spite of noting such fact the tribunal has allowed a medical expenditure to the tune of Rs. 15,000/-. The learned tribunal has also noted this fact that the deceased was treated at government hospital. Thus I find that the amount so granted towards medical expenditure by the learned tribunal is without any basis and I concur with the submission advanced on behalf of the appellant-insurance-company.

As regards the amount of compensation towards loss of love and affection, it is a fact that the deceased was the husband of claimant no.1 and father of the other claimants, as such I do not find any irregularity in allowing compensation on such head.

In view of the above discussion the compensation awarded by the tribunal requires to be modified to the aforesaid extent. The calculation of compensation is made hereunder:

Calculation of Compensation

Income...................................3000/-
Annual income 36,000/-
Less: deduction towards personal ...12,000/-
living expenses
Rs 24,000/-
Adopting multiplier 14 (24,000/- X 14)... Rs. 3,36,000/-
Add: Love & Affection Rs. 25,000/-
Funeral Expenses..................................Rs.2,000/-
Loss of consortium................................Rs.5,000/-
Loss of estate...Rs.2500/-
For transportation.................................Rs.2500/-
Total compensation Rs. 3,73,000/-

Thus the claimants are entitled to compensation amount to the tune of Rs 3,73,000/- along with interest @ 7% from the date of filing of the claim application till realisation.

Learned advocate for the appellant-insurance company submits that already the insurance company has made statutory deposit of Rs. 25,000/- on filing of the appeal as per provisions of section 173 of the Motor Vehicles Act and thereafter deposited a sum of Rs. 4,16,000/- along with interest in terms of order dated 28th August 2014 with the learned Registrar General, High Court, Calcutta. He also produces the photocopy of the challan.

Accordingly, the aforesaid amount already deposited with the learned Registrar General, High Court, Calcutta alongwith accrued interest shall be adjusted against the entire compensation amount together with interest. The appellant insurance company shall deposit the balance amount (if any) by way of cheque with the learned Registrar General, High Court, Calcutta within six weeks from date. Upon deposit of the said amount the learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants as per proportion mentioned in the order of the learned tribunal upon satisfaction of the identity of the claimants.

Respondent no.1 being the mother of minor claimant nos.2 & 3 shall receive the share of the minors and shall deposit the same in fixed deposit scheme of any Nationalised Bank or Post Office till the minors attain majority.

With the aforesaid observation 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.)