Ct. No. 14

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F.M.A.T. 482 of 2021

IA No. CAN 1 of 2021

Shrabanti Sonkar

-Versus-

Reliance General Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy …For the Appellant/Claimant

Mr. S.N. Ganguly …For the Respondent No. 1, Reliance General Insurance Company Limited.

Ms. Sucharita Paul …For the Respondent No. 2, the New India Assurance Company Limited.

This appeal has been preferred against the judgment and award dated 23rd April 2019 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter referred to as the learned Tribunal), 5th Court, Howrah, in MACC No. 133 of 2010. By this judgment, the learned Tribunal directed each of the respondent Nos. 1 and 2, namely, Reliance General Insurance Co. Ltd. and New India Assurance Co. Ltd. to pay a sum of Rs. 11,45,434/- as compensation to the claimants. Besides, the learned Tribunal directed each of them to pay interest @ 6% per annum on the awarded amount of money from the date of filing of the claim application on March 25, 2010.

Aggrieved by the compensation as awarded by the learned Tribunal, the appellant in the instant appeal seeks enhancement of the compensation.

Background facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act and which are necessary for adjudication may be summarized as under :

On 13the December, 2009 at about 18.00 hours, Rituraj Sonkar, son of Murliram Sonkar of Village

– Khalore (near College More), Post Office and Police Station – Bagnan, District - Howrah, was travelling by bus bearing No. WB-11/A-2567 which was proceeding from Uluberia to Bagnan side along the left side of the road at a moderate speed. At that time, a lorry bearing No. WB-23/A-8159, which was proceeding from opposite direction at excessive speed and driven in reckless manner endangering human life and safety dashed the bus with a great force in which he was travelling. As a result of which, he sustained severe injuries all over his body and died.

The victim died at the age of 33 years. He was an engineer attached to the office of the Block Development Officer, Amta Block-II, Howrah. He used to earn Rs. 17,868/- per month.

Owing to the rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-23/A-8159 (Lorry), the accident took place and the victim died because of the accident.

However, on the allegations of rash and negligent driving on the part of the drivers of both the two vehicles, an FIR was lodged at Uluberia Police Station and the FIR was registered as Uluberia Police Station Case No. 512/2009 dated December 13, 2009 under Sections 279 / 337 / 338 / 427 / 304A of the Indian Penal Code.

Owing to sudden and untimely death of the victim, the appellants/claimants, who happened to be the widow of the deceased and his father fell in acute financial crisis.

On the facts as above, the claimants sought for compensation of Rs. 28 lakhs with interest thereon.

Both the respondents Nos.1 and 2, namely Reliance General Insurance Co. Ltd. and New India Assurance Co. Ltd. contested the claim application by filing written statements wherein they denied the averments/allegations as made in the application and sought for dismissal of the claim case.

Upon hearing the learned Lawyers appearing for the parties and on consideration of the evidence on record, the learned Tribunal awarded compensation as indicated above.

Be it noted that after the award was passed, the father of the deceased, namely, Murliram Sonkar died and the instant appeal has been filed by Shrabanti Sonkar, the widow of the deceased.

As it appears from the impugned judgment, the learned Tribunal has recorded the findings that owing to rash and negligent driving on the part of the drivers of both the said two vehicles, the accident took place and the victim died because of the accident. No appeal or cross objection has been preferred by any of the Insurance Companies against the findings recorded by the learned Tribunal. Therefore, the uncontroverted findings show that due to rash and negligent driving on the part of the drivers of the aforesaid two vehicles, the accident took place and the victim breathed his last because of the accident.

It is not in dispute that the victim died at the age of 33 years and before his death, he was an engineer attached to the office of the Block Development Officer, Amta Block-II, Howrah.

As inferred by the learned Tribunal, the monthly income of the deceased after deduction of taxes was accessed at Rs. 16,738/-. The victim before his death had two dependents, his wife and father. Therefore, the deduction to the extent of 1/3rd as recorded by the learned Tribunal was justified.

Learned Lawyer appearing for the appellant submits that in view of the decision in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680** future prospects @ 50% would be added to the income of the deceased. But, the learned Tribunal erred in not considering this aspect while calculating the compensation. Since the victim had a permanent job, 50% of actual salary to the income of the deceased towards future prospects should be added to his income in terms of paragraph 59.3 of the decision in the case of ***Pranay Sethi*** (supra).

Learned Tribunal applied multiplier of 17. But, in view of the decision of the Hon'ble Apex Court in the case of ***Sarala Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121,** multiplier 16 would be adopted in case the victim was in the age group of 31 to 35 years. Therefore, the learned Tribunal erred in applying the multiplier 17 instead of multiplier 16.

The impugned judgment shows that the

learned Tribunal awarded a sum of Rs. 5,000/- as loss of consortium, Rs. 2,000/- towards funeral expenses and a sum of Rs. 2,500/- towards loss of estate totaling Rs. 9,500/-. The Hon'ble Apex Court in the decision in ***Pranay Sethi (supra)*** has held at paragraph 59.8 that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. Therefore, the learned Tribunal erred in computing general damages as Rs. 9,500/- instead of Rs. 70,000/-.

In view of the above, the award as passed by the learned Tribunal requires modification to the following extent :

Monthly income =	**Rs. 16,738/-**
Future prospects @ 50% =	**Rs. 8,369/-**
Total Monthly Income =	**Rs. 25,107/-**
Yearly income (Rs. 25,107 X 12) =	**Rs. 3,01,284/-**
1/3rd deduction on account of Personal & Living expenses	**Rs. 1,00,428/-**
Total (3,01,284 – 1,00,428) =	**Rs. 2,00,856/-**
Adopting multiplier 16 considering the age of the victim 33 years (16 X 2,00,856)	**Rs.32,13,696/-**
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.32,83,696/-

Admittedly, the claimants including the father of the victim received Rs. 22,85868/- as compensation.

Therefore, the claimant is now entitled to get a sum of Rs. 9,97,828/- as further awarded amount. Besides, the claimant, the widow of the victim is entitled to get interest @ 6% per annum on the aforesaid further awarded amount of Rs. 9,97,828/- from the date of filing of the claim application on 25.03.2010.

Therefore, on modification of the award passed by the learned Tribunal, each of the Insurance companies, namely, Reliance General Insurance Co. Ltd. and the New India Assurance Co. Ltd. is directed to deposit Rs.4,98,914/- each and interest @ 6% per annum on this amount from the date of filing of the claim application on March 25, 2010 by way of cheque with the learned Registrar General within six weeks from date.

After the aforesaid awarded amount of money is deposited by the Insurance Companies with the learned Registrar General, the Learned Registrar General shall release the amount to the claimant, Shrabanti Sonkar as expeditiously as possible after being satisfied with her 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 communicated 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.)