05.09.2022
SL No. 8
Court No. 654
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<u>F.M.A. 3843 of 2016</u>
IA No: CAN 1/2016 (Old No.: CAN 9250/2016)
(CAN Not found)

Smt. Arati Ruidas @ Das & Anr.
versus
The Regional Manager,
ICICI Lombard General Insurance Company Ltd. & Ors.

Mr. Krishanu Banik
...for the appellants.

Mr. Parimal Kumar Pahari
...for the respondent no.1

This appeal is directed against the Judgement and Award dated 29th January, 2016 passed by learned Judge, Motor Accident Claims Tribunal, Cum-Additional District Judge, 2nd Court, Bankura in M.A.C. Case No. 42 of 2013 (01 of 2014) under Section166 of the Motor Vehicles Act, 1988.

The factual matrix of the case is that on 29.12.2012 at about 9:10 pm while the deceased Siddheswar Ruidas @ Das and his son Mithu Ruidas @ Das were returning to their house at that time the offending vehicle bearing No. WB-41/3483(bus), which was coming from Uchalan, suddenly dashed the victim near Dighalgram-Uchalan Pitch Road, under P.S.-Indus, District-Bankura, resulting in death of the vicitm at the spot.

The claimants being the wife and son of the deceased respectively filed application under Section

166 of the Motor Vehicles Act, 1988 praying for compensation to the tune of Rs.3,50,000/-(Rupees Three lakhs fifty thousand only).

Upon consideration of the materials on record and the evidences the learned tribunal allowed the application of the claimants under Section 166 of the Motor Vehicles Act, 1988 directing respondent No. 1-Insurance Company to satisfy such award to the tune of Rs.3,50,000/-(Rupees Three lakhs fifty thousand) only alongwith interest @ 6% per annum from the date of filing of the claim application till date of realization of the compensation amount.

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

Mr. Krishanu Banik, learned advocate appearing on behalf of the claimants submits that the income of the deceased should have been considered at the rate of Rs.4,000/- per month as the accident took place in the year 2012. Moreover, referring to the decision of Hon'ble Supreme Court passed in ***National Insurance Co. Ltd. versus Pranay Sethi & Ors.*** reported in ***2017 ACJ 2700*** he submits that the general damages including loss of consortium, loss of estate and funeral expenses in all should be assessed @ of Rs. 70,000/- and an amount equally 10% of the annual income should be assessed towards future prospect. However the learned tribunal did not assess the compensation on such heads and he accordingly prays for enhancement of the compensation awarded in favour of appellants-claimants.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of respondent No. 1-Insurance Company submits that the observations made by the Hon'ble Supreme Court in ***Pranay Sethi & Ors. (supra)*** should be followed.

None appears on behalf of respondent Nos. 2 to 5.

It appears from the judgement of the learned tribunal that in spite of service of notice respondent Nos. 2 to 5 did not contest the case before the tribunal. Hence the service of notice upon respondent nos. 2 to 5 is dispensed with.

Mr. Banik, learned advocate for the claimants submitted that the income of the deceased should be considered at Rs.4000/- per month. Although the appellants-claimants asserted before the learned tribunal that the deceased used to earn Rs.4,000/- per month at the time of death as cobbler yet that was not accepted by the learned tribunal due to want of documents. Be that as it may, this Hon'ble court has in catena of decisions has considered the income of the deceased/victim at the rate of Rs. 4,000/- per month where the incident has taken place between the year 2011 and 2014. Accordingly, for assessing the compensation amount the income of the deceased is taken at the rate of Rs. 4,000/-per month.

It is found from the findings of the learned tribunal that the deceased at the time of death was aged 50 years. Therefore, following the observations of the Hon'ble Supreme Court made in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***2009 ACJ 1298*** as on the date of accident the deceased was aged about 50 years, hence the multiplier to be applied for assessing compensation in the present case should be 13. Thus, it is found that the learned tribunal erred in applying multiplier 12 in calculating compensation.

Further while assessing the compensation award the learned tribunal did not consider the aspect of future prospect of the deceased. The Hon'ble Supreme Court in ***Pranay Sethi & Ors. (supra)*** observed that in case of self-employed or person with fixed salary, the addition should be 10% between the age of 50 and 60 years. As in the case in hand the deceased was 50 years at the time of accident, hence an additional amount @ 10% of the annual income is to be taken into consideration towards future prospect of the deceased.

With regard to general damages it is found that the learned tribunal has assessed compensation under conventional heads namely funeral expenses and loss of consortium @ of Rs 15,000/- and Rs. 40,000/-

respectively, however no such amount has been allowed towards loss of estate. The Hon'ble Supreme Court in ***Pranay Sethi & Ors. (supra)*** observed that figures under the 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 to be reasonable. Hence the appellants-claimants are entitled to loss of estate to the extent of Rs. 15,000/-.

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

CALCULATION OF COMPENSATION

Monthly Income....................................Rs.4,000/-

Annual Income.........(Rs.4,000/-x 12)......Rs.48,000/-

Add: 10% of Annual Income Future prospect... Rs.4,800/-

Annual Loss of Income........................Rs. 52,800/-

Less: Deduction of 1/3rd of the annual income towards personal living expenses: Rs.17,600/-

Rs. 35,200/-

Adopting multiplier 13 (Rs 35,200/-X 13)..Rs,4,57,600/-

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.5,27,600/-

Admittedly an amount of Rs. 3,50,000/- along with accrued interest as awarded by the learned tribunal has already been received by the appellants-claimants. It is found from the impugned order of the learned tribunal that funeral expenses and loss of consortium has also been allowed in favour of the appellants-claimants to the tune of Rs.15,000/- and Rs 40,000/- respectively. Thus the appellants-claimants are entitled to a further amount of compensation equaling to Rs. 1,22,600/- (Rs.5,27,600/- less Rs. 3,50,000/- and Rs. 55,000). The appellants-claimants are also entitled to interest @ of 6% per annum on the said sum from the date of filing of the claim application date till the date of realization.

Accordingly the appeal succeeds and is allowed on contest against 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-ICICI Lombard General Insurance Company is directed to deposit a sum of Rs. 1,22,600/- along with interest @ of 6% per annum on the said amount from the date of filing of claim application till 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 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

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

(Bivas Pattanayak J.)