Ct. No. 14

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F.M.A. 1381 of 2013

IA No. CAN 1 of 2013 (Old No. CAN 5291 of 2013)

Smt. Mithu Dutta & Ors.
-Versus-
The New India Assurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy ...For the Appellants

Mr. S.N. Ganguly ...For the Respondent No. 1, The New India Assurance Company Limited

This appeal has been preferred against the judgment and award dated 16.08.2012 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Asansol, Burdwan (now Paschim Bardhaman) in MACC No. 138 of 2010. The appellants in the instant appeal seek enhancement of the compensation as awarded by the learned Tribunal.

By the Judgment dated August 16, 2012 the learned Tribunal directed the Insurance Company to pay a sum of Rs. 24,17,443/- to the appellants.

At the very outset it be noted that the claimant Nos. 3 and 4 namely Moumita Dutta and Sangita Dutta, the daughters of the victim Pintu Dutta who were minor at the time of filing of the claim application were minor. Now, they have attained majority and they are attainment of majority be noted in the memorandum of appeal and other relevant paper, if any, by correction. Henceforth, they will be treated as major.

The facts which are necessary for adjudication may be summarized as under :-

On July 25, 2010 at about 12.15 a.m. at night, Pintu Dutta, an employee of Eastern Coal Field Ltd. was proceeding to his place of work situated at Satgram Project riding on his motor cycle bearing No. WB-38R/3287 from his residence at Kankhaya village. While he reached in front of Maruti Petrol Pump near Chanda More under Police Station – Jamuria, on G.T. Road (NH-2) then a Tata Sumo bearing No. WB-38Q/2998 driven in rash and negligent manner by its driver dashed him. As a consequence thereof Pintu Dutta sustained fatal injuries on his person and he fell down on the road. He was shifted to Asansol S.D. Hospital by the local people where he was declared brought dead. The appellants/claimants allege that due to rash and negligent driving on the part of the driver of the offending vehicle, the victim met with the accident and died. The victim Pintu Dutta was an employee of Eastern Coal Field Ltd. and he used to earn Rs. 30,000/- per month. He died at the age of 44 years.

On the allegations of rash and negligent driving of the aforesaid offending vehicle on the part of its driver, an FIR was lodged at Jamuria Police Station and the FIR was registered as Jamuria Police Station Case No. 161 of 2010 dated August 17, 2010 under Sections 279/304A of the Indian Penal Code.

At the time of the accident the offending vehicle was insured with the respondent No. 1, the New India Assurance Co. Ltd.

Under the aforesaid facts, the claimants who happen to be the wife, mother and two daughters of the victim sought for compensation of Rs. 35,00,000/-.

Upon hearing the learned Advocates appearing for the parties and on consideration of the oral and documentary evidence adduced by the parties, the learned Tribunal disposed of all the issues and partly allowed the claim case and awarded compensation as above.

The learned Tribunal on assessment of the evidence on record especially evidence of the eyewitness has arrived at the inference that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place. On analyzing the evidence on record, I do not find any reason to interfere with the findings recorded by the learned Tribunal. That being so and since no cross appeal has been preferred by the Insurance Company challenging the findings of the learned Tribunal this Court may safely hold that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident happened. It is not in dispute that at the time of the accident the vehicle was insured with the respondent No. 1, the New India Assurance Co. Ltd.

Learned Lawyer appearing for the appellants submits that the learned Tribunal erroneously adopted the multiplier 13 instead of 14. Besides, the learned Tribunal awarded compensation on general damages to the extent of Rs. 9,500/- instead of Rs. 70,000/-. Learned Lawyer also submits that the learned Tribunal erred in holding that the pension received by the widow of the victim would be deducted from the annual income of the victim. If the correct multiplier is adopted and general damages to the extent of Rs. 70,000/- are added as per the latest decisions in ***Smt. Sarla Verma*** and ***Pranay Sethi***, the compensation as awarded by the learned Tribunal should be enhanced.

Per contra, learned Lawyer appearing for the respondent No.1 submits that at the time when the learned Tribunal passed the judgment and award, the learned Tribunal passed it justly considering the law as prevalent at that time. However, learned Lawyer fairly submits that in view of the Hon'ble Apex Court's decisions in the case of ***Smt. Sarla Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121** and ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680** the claimants are entitled to get the benefits of the aforesaid two decisions.

A reading of the judgment and award of the learned Tribunal shows that the learned Tribunal found that the yearly income of the victim was Rs. 3,03,059/-. But, the Tribunal deducted Rs. 24,648/-, which is admissible to the widow of the victim as pensionary benefits. It is not in dispute that the pensionary benefits, which are available to the widow of the victim, will not be deducted from the annual income of the victim. Therefore, the annual income of the victim will be assessed at Rs.3,03,859/-.

The learned Tribunal by adopting multiplier 13 has calculated the compensation.

But the Hon'ble Apex Court in the case of ***Smt. Sarla Verma & Ors. –Vs.- Delhi Transport Corporation & Anr. (Supra)*** has held at paragraph 42 that multiplier 14 will be adopted if the victim was within the age group of 41 to 45. Admittedly, the victim died at the age of 44 years. Therefore, adopting multiplier 14 will be just.

As it appears from the judgement and award of the learned Tribunal, the learned Tribunal did not compute any amount of compensation on the count of future prospects.

It is on the evidence on record that the victim was a permanent employee of Eastern Coal Field Limited. The Hon'ble Apex Court in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors. (Supra)*** has held at paragraph 59.3 that while determining the income, future prospects shall be calculated at the rate of 30% if the victim had a permanent job and he died in the age group between 40 to 50 years. That being so, 30% would be added as future prospects towards computing the compensation in favour of the claimants.

The Hon'ble Apex Court in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors. (Supra)*** at paragraph 59.8 has held that reasonable figures on conventional head, 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 widow of the victim should get Rs.40,000/- as consortium and all the claimants should get Rs. 30,000/- towards loss of estate and funeral expenses.

However, there is no objection on the part of the claimants if Rs. 40,000/- as loss of consortium admissible to the widow is equally distributed amongst the claimants.

In view of the above, the award as passed by the learned Tribunal needs modification in the following manner:-

1.	**Yearly Income**	**Rs. 3,03,059/-**
2.	**After 1/3rd Deduction (Rs.3,03,059 – Rs.1,01,019)**	**Rs. 2,02,040/-**
3.	**Future Prospects @ 30% (Rs.2,02,040 + Rs.60,612)**	**Rs. 2,62,652/-**
4.	**Adopting Multiplier 14 (Age- 44) (Rs.2,62,652 X 14)**	**Rs.36,77,128/-**
5.	**General Damages**	**Rs. 70,000/-**
	Total Compensation	**Rs.37,47,128/-**
	Less the amount awarded by the Tribunal	**Rs.24,22,443/-**
	Balance compensation Amount	**Rs.13,24,685/-**

Besides the above, the claimants are entitled to get interest @ 6% per annum on the awarded amount of money from the date of filing of the claim application.

In view of the above, the appeal merits success and accordingly the appeal is allowed on contest against the respondent No. 1 and ex parte against the respondent No. 2.

The respondent No. 1, the New India Assurance Company Ltd. is directed to pay a further sum of Rs. 13,24,685/- as compensation to the claimants. The Insurance Company is also directed to pay interest @ 6% per annum on the awarded amount of Rs. 24,22,443/- to the claimants from the date of filing of the claim application on 29.9.2010 till the date when this amount of money was deposited. The Insurance Company is further directed to pay interest @ 6% per annum on the further awarded amount of Rs. 13,24,685/- from the date of filing of the claim application on 29.9.2010.

The respondent No.1, The New India Assurance Company Limited is directed to deposit the aforesaid awarded amount with interest thereon as indicated above by cheque with the learned Registrar General, High Court, Calcutta within five weeks from date.

The learned Registrar General shall release the aforesaid amount of money in equal share amongst claimants as expeditiously as possible.

In view of the above direction the appeal and connected application, if any, stand disposed of.

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

(Rabindranath Samanta, J.)