15-12-2022
Item no.6
Subrata
Bhattacharyya

# IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction**

**FMAT No.802 of 2016**

**Karim Mondal & Anr.**

**-versus-**

**The National Insurance Company Limited**

Mr. Amit Ranjan Roy …for the appellants

Mr. K.K. Bandyopadhyay …for insurance company

This appeal is directed against a judgement and award dated July 8, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Murshidabad in MACC No.494 of 2012 granting compensation to the tune of Rs.2,02,500/- under section 163A of the Motor Vehicles Act, 1988.

Brief fact of the case is as follows. While the victim on July 11, 2012 at about 3 a.m. was driving one vehicle bearing no.WB73A/4375 was proceeding from Barasat side to Malda side and reached near Mahalo bus stoppage, then another vehicle bearing no.WB57A/9858 coming from the opposite direction dashed the vehicle driven by the victim, as a result of which the victim suffered serious injuries on his person and was immediately taken to Berhampore NG Hospital where he succumbed to his injuries. On account of sudden demise of the victim, the claimants being the parents of the victim filed the claim application under section 163A of the Motor Vehicles Act, 1988 for compensation before the Motor Accident Claims Tribunal.

Upon considering the materials on record, the evidence adduced on behalf of the claimants, both oral and documentary, the learned tribunal allowed compensation to the tune of Rs.2,02,500/- along with interest at the rate of 8% p.a. from the date of filing of the claim application. The compensation amount was directed to be apportioned between insurer of vehicle bearing no.WB57A/9858 and owner/insurer of vehicle bearing no.WB73A/4375.

Being aggrieved by and dissatisfied with the impugned judgement and award, the claimants have filed the present appeal.

It is found that the respondent no.2-the owner of the offending vehicle, did not contest the claim application and the case was disposed of *ex parte* against him. In such view of the matter, service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with.

Mr Amit Ranjan Roy, learned advocate appearing for the appellants-claimants, submits that the learned tribunal erred in deducting 1/2 of the annual income of the deceased towards his personal and living expenses whereas it ought to have been $1/3^{rd}$ following the Second Schedule to Section 163A of the Motor Vehicles Act, 1988. He further submits that the learned tribunal considered the age of the parents of the deceased for adopting multiplier which as per the settled position of law should be based on the age of the deceased victim. Further the learned tribunal erred in making apportionment of the compensation amount since in an application under Section 163A of the Act the question of contributory negligence cannot be gone into. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

Mr Kanak Kiran Bandyopadhyay, learned advocate representing the respondent no.1-insurance company, opposes the prayer for enhancement of the compensation amount. Referring to a decision of Hon'ble Supreme Court passed in ***Ramesh Singh & Anr. versus Satbir Singh & Anr.*** reported in ***AIR 2008 SC 1233***, he submits that the learned tribunal has rightly taken into consideration the age of the parents of the victim for adopting multiplier. In view of his submission, he prays that the appeal is liable to be dismissed. He further draws the attention of the court to the fact that the learned tribunal erred in granting interest on the compensation from December 1, 2012 which is prior to the filing of the claim application i.e. on December 11, 2012, which needs to be rectified.

Having heard learned advocates appearing for the respondent parties, I now proceed to decide the issues involved in the present appeal.

With regard to deduction towards personal and living expenses of the deceased, it is found that the learned tribunal has deducted 1/2 of the annual income of the deceased towards his personal and living expenses. As this is an application under Section 163A of the Motor Vehicles Act, 1988, hence Second Schedule to the aforesaid provision is to be followed which provides for deduction of 1/3rd towards the personal and living expenses of the deceased. Thus, the deduction towards personal and living expenses of the deceased irrespective of whether the deceased was married or died as a bachelor, should be 1/3rd of his annual income, instead of 1/2.

With regard to the multiplier, Mr Roy has argued that the age of the deceased is to be taken into account for adopting multiplier. *Per contra*, Mr Bandyopadhyay argues that the age of the parents has been rightly taken into consideration by the learned tribunal for adopting multiplier. The Hon'ble Supreme Court in ***Ramesh Singh's case (supra)*** considering the law laid down in *New India Assurance Company Limited versus Charlie and Another reported in AIR 2005 (SC) 2157* observed that the choice of the multiplier is to be determined by the age of the deceased or the claimants, whichever is higher. However, subsequent decision of a Constitution Bench of the Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** at paragraph no.59.7 clearly lays down that the age of the deceased should be the basis for applying the multiplier. The aforesaid proposition in ***Pranay Sethi's case (supra)*** has also been followed in ***Royal Sundaram Insurance Co. Ltd versus Mandala Yadagari Goud and Others*** reported in ***(2019) 5 SCC 554*** by Hon'ble Supreme Court observing that the age of the deceased is to be taken into account and not the age of the dependants. Thus, as per the settled principles of law laid down by the Hon'ble Supreme Court the age of the deceased is to be taken into account for adopting multiplier. Indisputably, the deceased at the time of death was 22 years and therefore as per the decision of the Hon'ble Supreme Court in ***Sarla Verma & Ors. versus. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121,*** the multiplier should be 18.

It appears from the impugned judgement that the learned tribunal holding involvement of the two vehicles directed for apportionment of the compensation amount in equal proportion between insurer of vehicle bearing no. WB57A/9858 and owner/insurer of vehicle bearing no.WB73A/4375.It is trite law that percentage of apportionment is made on the basis of extent of fault or negligence of each of the vehicle involved in the accident. One cannot lose sight of the fact that the claim application was filed under section 163A of the Motor Vehicles Act, 1988. The provisions of sub-section (2) of section 163A of the said Act is reproduced hereunder for convenience:–

> *"In any claim for compensation under section sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."*

Bearing in mind the aforesaid provisions, the fact of negligence or default or wrongful act of the owner of the vehicle or vehicles concerned or of any other person is not required to be pleaded or established. Thus, the impugned order of apportionment of the compensation amount is liable to be set aside.

The other aspect such income of the deceased has not been challenged in the present appeal.

In view of the aforesaid aspects, the compensation is calculated as hereunder: –

**Calculation of compensation**

| | |
|---|---|
| Monthly income | Rs.3,000/- |
| Annual income (Rs.3000x12) | Rs.36,000/- |
| Less: deduction of 1/3rd towards personal and living expenses as the age 22 yrs. …… | Rs.12,000/- |
| | Rs.24,000/- |
| Multiplier 18 (Rs.24,000x18) | Rs.4,32,000/- |
| General Damages | Rs.4,500/- |
| Total | Rs.4,36,500/- |

Thus the total compensation comes to Rs.4,36,500/- along with interest at the rate of 6% per annum from the date of filing of the claim application till the date of deposit. It is informed that a sum of Rs.1,01,250/- has been received by the claimants. Hence the claimants are entitled to receive the balance amount of Rs.3,35,250/- along with interest @ 6% per annum from the date of filing of the claim application (December 11, 2012) till deposit. It is clarified that the date of filing of the claim application is December 11, 2012 which has been wrongly mentioned by the learned tribunal as December 1, 2012.

The respondent-insurance company is directed to deposit balance amount of Rs.3,35,250/- along with interest @ 6% per annum from December 11, 2012 till deposit by way of cheque before the learned Registrar General of this court within a period of six weeks from date. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall disburse the amount in favour of the claimants in equal share, subject to satisfying their identity.

The appellants are directed to deposit *ad valorem* court fees on the enhanced amount, if not already deposited.

With the above observation, the appeal and the connected application, if any, stand disposed of.

Interim order, if any, stands vacated.

Certified copy of this order, if applied, shall be given to the parties on compliance of all legal formalities.

**[Bivas Pattanayak, J]**