IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

FMA 3394 of 2013

United India Insurance Company Limited
-Vs-
1. Smt. Rita Dhar
2.Smt. Anjali Dhar
3.Sri Ram Chandra Sahani
With
COT 1 of 2014
Smt. Rita Dhar & Anr.
-Vs-
United India Insurance Company Limited & Anr.
With
CAN 3 of 2015
(Old CAN 4166 of 2015)

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Mr. Parimal Kumar Pahari, Adv.
..... for the Appellant
(Respondent No.1 in COT)

Mr.Jayanta Kumar Mondal,Adv.
Mr. Sayantan Rakshit,Adv.
..... for Respondents 1 & 2/Claimants
(Appellants in COT)

Heard On : 06.07.2022

Judgment on : 02.08.2022

Rabindranath Samanta, J:-

1. Being aggrieved by the judgment and award dated 23.05.2013 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be

referred to as the Tribunal), 6th Court, Alipore, South 24 Parganas in MACC No. 11 of 2008, the appellant United India Insurance Company Limited has preferred the instant appeal. By the judgment the learned Tribunal directed the Insurance Company to pay compensation of Rs.7,30,000/- to the respondents/claimants in equal share and to pay interest @ of 8% per annum on the awarded amount of money from the date of filing of the claim application till its realization.

2. Challenging the award the appellant assails that the claim case brought by the claimants is liable to be dismissed.
3. On the other hand, the respondent Nos. 1 and 2 Smt. Rita Dhar and Anjali Dhar by preferring the cross-objection being COT 1 of 2014 assail that the compensation as awarded by the learned Tribunal is inadequate and the compensation needs to be enhanced.
4. Background facts which are necessary for adjudication on the points raised by the respective parties may briefly be stated as under:

   On 19th March, 2007 at about 13:10 hrs a vehicle (Minidoor Van) bearing registration No. WB-15B/0002 was proceeding along Belgachia Road at excessive speed endangering to human life and safety. When the vehicle reached infront of 64/1, Belgachia Road the vehicle knocked down Debajyoti Dhar @ Debjyoti Dhar of East Chandmari, Barrackpore 2nd Lane, P.S- Titagarh, North 24 Parganas. As a result he sustained severe injuries on his person. The victim was removed to R.G.Kar Hospital where he was treated and discharged by the doctors. As the condition of the victim was critical he was removed to S.S.K.M Hospital where he was admitted and died in the hospital.
5. At the time of his death the victim was aged about 42 years.
6. Owing to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place and the victim ultimately died sustaining severe injuries on his person because of the accident. On the allegations of rash and negligent driving, an FIR was lodged at Ultadanga Police Station and the FIR was registered as Ultadanga P.S

Case No. 46 dated 19.03.2007 under Sections 279/338, IPC for investigation. On the death of the victim Section 304A, IPC was added to the case.

7. The victim used to earn Rs.6,000/- per month as an employee of M/S. Badhon Construction, Bankra Laskar Para, Lalbari, P.S- Domjur, Howrah. The victim died leaving behind claimant No.1 Smt. Rita Dhar as widow and claimant No.2 Anjali Dhar as mother and legal heirs. Owing to the untimely sad demise of the victim, his family members fell in acute financial distress. The deceased was the only earning member of his family.
8. At the time of the accident the offending vehicle was insured with United India Insurance Company Limited, the appellant herein.
9. On the facts as above the respondents sought for compensation of Rs.7,50,000/- with interest from the date of filing of the claim case.
10. The appellant United India Insurance Company Limited contested the case by filing a written statement as well as by filing an additional written statement. In the written statements, the appellant denied the averments/allegations as made in the claim application. It stated that from the charge-sheet it was found that one Kailash Shaw was the driver of the offending vehicle at the time of the accident and the driving licence possessed by him was issued by the licensing authority of North 24 Parganas at Barasat. The number of the licence was WB-25-032882 and it was valid for the period from 28.02.2001 to 27.02.2010. But, the appellant after a thorough investigation through an investigating agency under name "Mack Insurance Auxiliary Services (P) Ltd" came to learn that the driver Kailash Shaw was holding a fake driving licence and in that regard a certificate was duly issued by the Motor Vehicle Department, Barasat, North 24 Parganas on 27.05.2008. In fact, the driving licence bearing No. WB-25-032882 was issued in favour of one Sanjoy Biswas S/o. C.C. Biswas of Netaji Pally, Kolkata-83 and the licence was valid from 23.10.1997 to

22.10.2000. On such grounds, the appellant United India Insurance Company Limited sought for dismissal of the claim case.

11. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:

    i) Is the case maintainable?
    ii) Have the claimants any cause of action?
    iii) Is the case barred by limitation?
    iv) Whether the case is bad for defect of parties?
    v) Whether there was any involvement of vehicle no.WB-15B/0002 (Minidoor Van) in the case accident by its rash and negligent driving for which accident was caused resulting in death of Debajyoti Dhar @ Debjyoti Dhar?
    vi) Whether the claimants are entitled to compensation as prayed for? If so, what amount and from whom?
    vii) Whether the respondents are liable to pay any compensation as prayed for?
    viii) To what other relief or reliefs, if any, are the claimants entitled?

12. To prove their case claimant No.1 Smt. Rita Dhar got herself examined as P.W.1. They examined MonoMohan Halder (P.W.2) and Sudipto Das(P.W.3). On the other hand, the Insurance Company examined Chandan Kumar Mondal, an authorised signatory of the Insurance Company as D.W.1. The documents upon which the claimants placed reliance were marked as Exhibits 1 to 11 and the documents which the appellant Insurance Company filed were marked as Exhibits A and B.

13. Upon hearing learned advocates appearing for the parties and on consideration of ocular and documentary evidence the learned Tribunal disposed of the issues as above and partly allowed the claim case by awarding the compensation as indicated above.

14. Mr. Parimal Kumar Pahari, learned lawyer for the appellant submits that the appellant by evidence proved before the learned Tribunal that the driver of the offending vehicle namely Kailash Shaw possessed a fake driving licence. The driving licence as mentioned in the charge-sheet in fact belonged to one Sanjoy Biswas S/o. C.C. Biswas of Netaji Pally, Kolkata- 83 and the driving licence was valid from a period of 23.10.1997 to 22.10.2000. In such context Mr. Pahari by referring to Section 149(2)(a)(ii) of Motor Vehicles Act,1988 submits that since the driver of the offending vehicle possessed a fake driving licence the Insurance Company was not liable to pay any compensation to the claimants.

15. Per Contra, Mr. Jayanta Kumar Mondal, learned lawyer appearing for the respondents/claimants submits that no evidence has been adduced on the part of the Insurance Company to substantiate the allegations that the driver of the offending vehicle possessed a fake driving licence. Mr. Mondal points out that the Insurance Company failed to examine any official of the concerned Motor Vehicle Department to prove that the licence possessed by the driver of the offending vehicle was fake. Learned lawyer further submits that the Insurance Company only examined an official of the Insurance Company and two documents (Exhibits A and B) produced by the witness were merely marked as Exhibited documents with objection from the side of the claimants. According to learned lawyer exhibiting any document with objection does not denote that the contents of the document have been proved and the document has been admitted in evidence in accordance with law. On such score learned lawyer argues that the appeal preferred by the Insurance Company is liable to be dismissed. Learned lawyer submits that in view of the decision in the case of ***Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors*** reported in ***(2009) 6 SCC 121*** and the decision in the case of ***National Insurance Company Limited –Vs- Pranay Sethi and***

Ors reported in ***(2017) 16 SCC 680*** the compensation as awarded by the learned Tribunal should be enhanced and the Cross-Objection preferred by his clients should be allowed.

16. On assessment of the evidence of D.W.1 Chandan Kumar Mondal it appears that this witness produced two documents- one containing number of Driving Licence and the another relating to payment of Rs.500/- to the Motor Vehicle Department by one Sanjoy Biswas. The Hon'ble Apex Court in the decision in the case of ***R.V.E. Venkatchala Gounder-Vs-Arulmigu Viswesaraswami & V.P.*** reported in ***2003 SAR (Civil) 929*** has held at paragraph 19 that Order 13 Rule 4 of the Code of Civil Procedure provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. As it appears from the endorsement on the exhibited documents, the documents marked as Exhibits A and B were put on evidence with objection raised from the side of the claimants. The learned Tribunal on consideration of these exhibited documents has opined that since the concerned official from the Motor Vehicle Department was not examined, the aforesaid documents would not be held to have been admitted in evidence. In the absence of proper proof of the documents by the competent official of the concerned Motor Vehicle Department, I am of the opinion that the contents of the documents have not been proved, nor the documents have been admitted in evidence in accordance with law. Therefore, no reliance can be placed on Exhibits A and B. The Hon'ble Apex Court in the decision in the case of ***National Insurance***

Company Limited-Vs-Swaran Singh & Ors reported in ***(2004) 1 WBLR (SC) 315*** has held that the proposition of law is no longer res integra that the person who alleges breach of the conditions of insurance policy must prove the same and the Insurance Company is required to establish the said breach by cogent evidence. In the event, the Insurance Company fails to prove that there has been breach of conditions of policy on the part of the insured; the Insurance Company cannot be absolved of its liability to pay compensation. Therefore, the submission advanced by learned lawyer for the appellant that no liability is cast upon the Insurance Company to pay the compensation is not acceptable.

17. Admittedly and as it appears from the charge-sheet on record, Kailash Shaw was the driver of the offending vehicle. In the absence of any substantial evidence to the contrary, it will be held that the owner of the offending vehicle employed or deployed him as the driver of the vehicle after being satisfied with his competence to drive vehicle properly.

18. The claimant No.1 Rita Dhar(P.W.1) in her evidence has stated that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and her husband lost his life because of the accident. P.W. 2 MonoMohan Halder is the eye-witness to the accident and this witness in his evidence has stated that he saw the offending vehicle was proceeding with a high speed as well as in rash and negligent manner and the vehicle dashed the victim. As a result of which he sustained injuries on his person. He was admitted to R.G.R Kar Hospital. Later he heard that he died. This evidence of P.W. 2 remains unshaken in cross-examination. On analysing such evidence I concur with the findings of the learned Tribunal that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim died because of the

accident. Admittedly, at the time of the accident the offending vehicle was insured with the Insurance Company.

19. The learned Tribunal, placing reliance on the voter's identity card of the victim has held that at the time of the accident the victim was aged 42 years. No evidence is forthcoming on behalf of the Insurance Company by which it can be said that the victim at the time of the accident was not aged 42 years.

20. The claimants in their claim application have asserted that the victim Debajyoti Dhar @ Debjyoti Dhar used to earn Rs.6,000/- per month as an employee of M/S Badhon Construction. P.W. 3 Sudipto Das, the accountant of Badhon Construction has proved the certificate of salary of the victim (Exhibit 1 issued by the proprietor of Badhon Construction). The salary certificate shows that the victim used to earn Rs.6,000/- per month as an accountant of the firm. Learned lawyer appearing for the claimants submits that the learned Tribunal did not award any compensation on the count of future prospects of the deceased. Besides, the learned Tribunal erred in awarding compensation of Rs.10,000/- on the counts of loss of estate, consortium and funeral expenses instead of awarding compensation of Rs.70,000/- on such counts. In such context learned lawyer places reliance on the decision in the case of ***Pranay Sethi*** (supra).

21. In view of the discussion as above it stands proved that the accident took place due to rash and negligent driving of the offending vehicle and the victim Debajyoti Dhar @ Debjyoti Dhar died because of the accident at the age of 42 years. Before his death the victim used to earn Rs.6,000/- per month.

22. It is not in dispute that the claimants who are the widow and mother of the victim are his dependents.

23. In the decision in the case of ***Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors*** reported in ***(2009) 6 SCC 121*** the Hon'ble Apex Court at paragraph 30 has held that where the deceased

was married, the deduction towards his personal and living expenses should be one-third (1/3rd) where the number of the dependent family members is two to three. In this decision the Hon'ble Apex Court at paragraph 42 has held that multiplier 14 will be adopted if the victim was within the age group between 41 to 45 years. In such legal scenario, the multiplier as adopted by the learned Tribunal as 15 is erroneous. Similarly, deduction to the extent of 2/3rd is also erroneous. In the decision in the case of ***National Insurance Company Limited –Vs- Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680*** the Hon'ble Apex Court at paragraph 59.8 has held 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. But, as quoted above, the learned Tribunal awarded compensation on such conventional heads to the extent of Rs.10,000/- only. Therefore, the award passed by the learned Tribunal requires modification.

24. The victim, as observed above, was on a fixed salary of Rs.6,000/- per month. The Hon'ble Apex Court in ***Pranay Sethi*** (supra) has held at paragraph 59.4 that where the deceased was on a fixed salary an addition of 25% of the established income should be the warrant where the deceased was between the age of 40 to 50 years.

25. In such context, learned lawyer for the claimant submits that the claimant No.1 Rita Dhar, the widow of the deceased is entitled to get compensation of Rs.40,000/- as spousal consortium. But, the claimants will have no objection if such amount of Rs.40,000/- is allowed to the claimants in equal share.

26. Having heard learned counsels appearing for the parties and in view of the decisions (supra), the compensation as awarded by the learned Tribunal needs modification to the following extent:

i)	Monthly Income assessed as =	Rs. 6,000/-
ii)	Annual Income assessed as= (Rs. 6,000 x 12) =	Rs. 72,000/-
iii)	Future Prospects to be assessed at the rate of 25% =	Rs. 18,000/-
iv)	Total=	Rs. 90,000/-
v)	1/3rd deduction on account of personal and living expenses of = the deceased	Rs. 30,000/-
vi)	Adopting Multiplier 14 considering the age of the victim of 42 years (Rs.60,000 x 14) =	Rs. 8,40,000/-
vii)	General damages= (Rs.15,000 on account of loss of Estate, Rs.40,000/- on account of Loss of consortium and Rs.15,000/- On account of funeral expenses)	Rs. 70,000/-

27. Therefore, the claimants are entitled to get compensation of Rs.9,10,000/- towards loss of dependency. Besides, the claimants are also entitled to get interest @ of 6% per annum on the awarded amount of money from the date of filing of the claim application on 20.12.2007.

28. In view of the above, the appeal being FMA 3394 of 2013 preferred by the United India Insurance Company Limited is dismissed and the cross-objection being COT 1 of 2014 preferred by the claimants is allowed.

29. As it appears from the case record, the appellant at the time of filing of the appeal made the statutory deposit of Rs.25,000/- vide challan dated 5th July, 2013. Thereafter, it deposited Rs.7,05,000/- vide cheque dated 26.08.2013 in compliance with the order of a

Division Bench of this Court. Therefore, the appellant United India Insurance Company Limited has deposited Rs.7,30,000/-.

30. The appellant United India Insurance Company Limited is directed to deposit Rs.1,80,000/- as the rest amount of the awarded amount of Rs.9,10,000/- and to deposit interest on the awarded amount of money from the date of filing of the claim application on 20.12.2007 with the learned Registrar General, High Court, Calcutta within five weeks from date.

31. After the further deposit is made, the learned Registrar General shall release the compensation amount to the claimants in equal share out of the deposited amount by the appellant as expeditiously as possible.

32. With the aforesaid direction the appeal, the cross-objection and connected application, if any, stand disposed of.

33. No order as to costs.

34. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.

35. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)