**28.11.2022**
**SL No.41**
**Court No. 654**
**Ali**

**IN THE HIGH COURT AT CALUTTA**
**Civil Appellate Jurisdiction**

**FMA 1216 of 2022**
**( F.M.A.T. 987 of 2015)**

**Gayatri Bardhan**
**Vs.**
**The National Insurance Co. Ltd. & Anr.**

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
….for the appellant-claimant.

Mr. Afroze Alam
….for the respondent No. 1-Insurance Company.

This appeal is preferred against the judgment and award dated 8 March 2012 passed by learned Judge, Motor Accident Claims Tribunal, 9th court, Jalpaiguri in M.A.C. Case no.25 of 2012 under Section 166 of the Motor Vehicles Act, 1988 granting compensation of Rs. 10,78,628/- in favour of the claimant.

The brief fact of the case is that on 15 December 2011 at about 10 PM while the victim was returning home from Kamakshyaguri through Kamakshyaguri-Barovisa *pucca* road on his motorcycle bearing no. WB-70B/6996 and when he reached near Ghoramara Chowpathi under Kumargram PS, at that time the offending vehicle bearing no. WB-72A/6633(Maruti Van) moving with high-speed and in rash and negligent manner dashed the victim as a result of which he sustained grievous injuries on his person. The local people shifted the victim to Kamakshyaguri Primary Health Center and thereafter he was shifted to Alipurduar Sub-Divisional Hospital and also to Dr Chang's Nursing Home at Siliguri for his better treatment but ultimately on 16 December 2011 he succumbed to his injuries. On account of sudden demise of the deceased- victim the claimant being the mother of the deceased filed application for compensation to the tune of Rs.11,50,000/-under Section 166 of the Motor Vehicles Act, 1988.

Upon considering the materials on record, the evidence both oral and documentary adduced on behalf of the claimant, the learned tribunal allowed compensation of Rs. 10,78,628/- in favour of the claimant.

Being aggrieved by and dissatisfied with the impugned judgment and award claimant has preferred the present appeal.

Mr Subir Banerjee, learned advocate for appellant-claimant submits as follows.

The learned tribunal erred in considering the net income of Rs.12,206/-per month as the monthly income of the deceased which ought to have been calculated by deducting professional tax from the gross income of the deceased relying on the figures available in the salary certificate ***(Exhibit 10).***

Further the deceased at the time of accident was 21 years of age and was employed as a school teacher having a permanent job and thus in view of observation of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** an additional amount equalling to 50% of the annual income of the deceased-victim should be taken into account towards future prospect.

The learned tribunal erroneously considered the age of the mother of the deceased-victim for adopting the multiplier which ought to have been adopted by considering the age of the deceased-victim in terms of decision of Hon'ble Supreme Court passed in ***Amrit Bhanu Shali and others versus National Insurance Company Limited*** reported in ***(2012) 11 SCC 738*** and ***Royal Sundaram Alliance Insurance Company Limited versus Mandala Yadagari Goud and others*** reported in ***(2019) 5 SCC 554.*** Further considering the age of the deceased as 21 years as per the decision of Hon'ble Supreme Court passed in ***Sarla Verma (Supra) & Ors versus Delhi Transport Corporation and Anr*** reported in ***(2009) 3 WBLR (SC) 700*** the multiplier should be 18.

The general damages under the conventional heads namely funeral expenses and loss of estate of

Rs. 15,000/- each should be granted following the observation of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra).***

The learned tribunal erred in not allowing interest on the compensation amount from the date of filing of the claim application till deposit rather the interest was allowed as a default clause which needs to be modified in the interest of justice.

In his usual fairness he submits that the learned tribunal erred in deducting 1/3rd instead of ½ (half) of the income of the deceased towards personal and living expenses as victim died a bachelor.

Mr Afroze Alam, learned advocate for respondent no.1-insurance company submits that the observation of the Hon'ble Supreme Court made in ***Pranay Sethi's case (supra)*** is to be followed in computing the compensation amount.

By an order dated 17.8.2022 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with.

Having heard the learned advocates of both the sides, accordingly, I proceed to discuss the issues raised in this appeal.

With regard to the income of the deceased, it is found that the learned tribunal has considered the net income of Rs.12,206/-per month to be the monthly income of the deceased victim. However as per the decision of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** the income should be actual income less tax component. Therefore as from the salary certificate **(Exhibit 10)** it appears that the gross income of the deceased-victim is Rs.12,916/- per month and the Professional Tax is Rs.110/-, taking into consideration the aforesaid figures, the gross salary of Rs.12,916/- per month less the Professional Tax of Rs.110/-comes to Rs.12,806/- per month which should be the monthly income of the deceased-victim.

The deceased-victim in the present case was in permanent employment as a school teacher and was aged 21 years and thus as per the decision of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** an amount equalling to 50% of the annual income of the deceased-victim is to be taken into account towards future prospect.

The learned tribunal has considered the age of the mother for adopting the multiplier. However following the observation of Hon'ble Supreme Court passed in ***Amrit Bhanu Shali (supra) and Mandala Yadagari Goud (supra)*** the age of the deceased is to be taken into consideration for adopting the multiplier and not the age of the parent. Thus considering the age of the deceased to be 21 years, the multiplier as per observation of Hon'ble Supreme Court in ***Sarla Verma's case (supra)*** would be 18.

Further it is found that the learned tribunal allowed the general damages of Rs.4,500/-. However following the observation of Hon'ble Supreme Court made in ***Pranay Sethi's case(supra)*** the general damages under the conventional heads namely funeral expense and loss of estate should be Rs.15,000/- each.

Further the learned tribunal did not grant any interest on the compensation amount and the interest has been granted as a default clause. Accordingly the claimant is entitled to receive interest on the amount of compensation from the date of filing of the claim application till its realization.

In view of the above the compensation is calculated as hereunder.

**Calculation of compensation**

Monthly Income..(Rs.12,916/- less Rs.110/-)..Rs.12,806/-
Annual Income.....(Rs.12,806/- X 12)..........Rs 1,53,672/-
Add: Future Prospects @ 50% of total Income...Rs.76,836/-
Annual loss of Income................................Rs.2,30,508/-
Less: Deduction of ½ of the Annual Income
towards personal and living expenses.......... Rs.1,15,254/-
Rs.1,15,254/-

Adopting multiplier 18 ( Rs.1,15,254/- X 18)..Rs.20,74,572/-
Add: General Damages..................................Rs.30,000/-

Loss of estate............Rs.15,000/-

Funeral Expenses.......Rs.15,000/-

Total Compensation...................................Rs.21,04,572/-

Thus the total compensation comes to Rs.21,04,572/-. It is informed that the appellant-claimant has already received the amount of compensation of Rs.10,78,628/-. It is pertinent to note that the learned tribunal did not allow interest on the compensation amount. Accordingly, the appellant-claimant is entitled to interest @ 6% per annum on amount of compensation of Rs. 10,78,628/- granted by learned tribunal, from the date of filing of the claim application till the date of deposit made before the learned tribunal.

Accordingly, the respondent no.1-National Insurance Company Limited is directed to deposit the balance amount of Rs. 10,25,944/- alongwith interest @ 6% per annum from the date of filing of the claim application till deposit and the interest as indicate in the foregoing paragraph, by way of cheque with learned Registrar General, High Court, Calcutta within a period of six weeks from date. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the said amount to the appellant-claimant on satisfaction of her identity.

The appeal accordingly stands allowed on contest. No order as to cost.

With the aforesaid direction the appeal, stands disposed of.

All connected applications stand disposed of.

Interim order, if any, also stands vacated.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance of necessary legal formalities.

**(Bivas Pattanayak, J.)**