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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMAT 1121 of 2012

Susmita Panja & Anr.
Vs.
Oriental Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy
... For the appellants/claimants

Ms. Gopa Das Mukherjee
... For the respondent/Insurance Co.

Being aggrieved by and dissatisfied with the judgment and award passed on 14th March, 2012 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Fast Track Court, Tamluk, Purba Medinipur, in MAC Case No.64 of 2000/293 of 2008 under Section 166 of the Motor Vehicles Act, 1988, this appeal has been filed.

The original claim petition was filed on account of death of one Uttam Kumar Panja, i.e., the husband of the claimant no.1 Susmita Panja, in a motor accident by the involvement of a Bus bearing registration no.WB-33A/2346 proceeding from Jothgoura to Paskura, on 8th July, 2008 at about 6.00 a.m. On the relevant date and time, the driver of the said Bus was driving the same with high speed and in reckless manner, endangering human life and safety and also violating the traffic rules. As a result, the said Bus collided with one Truck bearing registration no.WB-29/3856 coming from the opposite direction also with high speed. The accident took place near Jiankhali village of Ghatal. Uttam Kumar Panja, being a passenger of the Bus, died on the spot. After the accident, Paskura Police Station Case No.110 of 2008 dated 8th July, 2008 under Section 279/337/338/304A/ 427 of the Indian Penal Code was started. The claimants, i.e., the heirs of the victim, filed the claim petition with a prayer for compensation of Rs.14,50,000/-.

Admittedly, both the vehicles were duly insured with the Oriental Insurance Company Limited at the time of accident and the Oriental Insurance Company Limited contested the claim case by filing written statement denying all averments in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation.

In course of trial, claimants adduced evidence of three witnesses. PW-1, wife of the deceased, corroborated the contents of the claim petition regarding accident, employment and age of her deceased husband. In course of her evidence, certified copy of the First Information Report, charge sheet, seizure list, salary certificate, post mortem report, Admit Card of the Madhyamik Pariksha of the deceased and insurance policy were all admitted in evidence as Exhibit 1 to 9.

PW-2 claiming herself to be an eye-witness and also one of the passengers of the Bus bearing registration no.WB-33A/2346 also corroborated the accident due to reckless driving of both the vehicles.

PW-3, General Duty Attendant of Block Medical Officer of Health, Jagatballavpur Rural Hospital, District Howrah, proved the employment and salary of deceased Uttam Kumar Panja.

Learned Tribunal in assessing monthly income of the deceased took the net salary of deceased and not only that, the learned Tribunal also deducted the amount of pension received by the claimant no.1, i.e., the wife of the deceased. Accordingly, the learned Tribunal calculated the compensation to the tune of Rs.6,39,380/-

Learned advocate appearing on behalf of the appellants/claimants only disputed the assessment of quantum of compensation by taking net pay instead of gross salary. Leaned advocate appearing on behalf of the appellants/claimants also submitted that no amount was added towards future prospect. In support of the contention, learned advocate appearing on behalf of the appellants/claimants has referred to a case of **Vimal Kanwar & Ors. v. Kishore Dan & Ors.** reported in **2013 SAR (Civil) 584 (SC)** wherein the Hon'ble Apex Court held that "Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "Pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death.”

In opposition to that, learned advocate appearing on behalf of the respondent/Oriental Insurance Company Limited has supported the judgment passed by the learned Tribunal.

On careful perusal of the evidence on record along with FIR and charge sheet, I do not find any necessity to discuss in detail on the issue of accident which by the involvement of two vehicles and the accident which took place due to rash and negligent driving of the drivers of the two vehicles. It also appears from the evidence that Uttam Kumar Panja, the victim of the case, died in that accident and the heirs of the deceased are entitled to compensation. Besides none of the learned advocates raised those issues before this Court. Dispute raised regarding quantum of compensation.

On perusal of the judgment passed by the learned Tribunal, I find that the learned Tribunal considered the net salary in assessing the compensation and further deducted pension from the amount of compensation, received by the wife of the deceased.

In view of the principles laid down in **Vimal Kanwar** (supra), I find that there is no scope to deduce any of the amount from the gross salary, save and except professional tax and income tax. From the certified copy of the pay bill (Ext.-9) of Uttam Kumar Panja, since deceased, who was an employee of Hospital, it appears that he used to draw gross salary of Rs.12,399/- and professional tax of Rs.110/- was deducted.

In that view of the matter, the amount of Rs.12,289/- should be taken into account after deducting professional tax of Rs.110/- from the gross salary. In view of the principles laid down in **Vimal Kanwar** (supra), I find hardly any scope to deduct further amount of Rs.4,000/- allotted towards pension.

With the aforesaid observation, I determine the compensation as follows:-

Monthly Income	Rs. 12,399/-
Less: Deduction of Professional Tax	Rs. 110/-
	Rs. 12,289/-
Annual Income (Rs.12,289/- x 12)	Rs. 1,47,468/-
Less: 1/3rd Deduction (personal expenses) (Rs.1,47,468/- – Rs.49,156/-)	Rs. 98,312/-
Add: Future prospect (@ 30% of Rs.98,312/-)	Rs. 29,493/-
	Rs. 1,27,,805/-
Multiplier by 15 (Rs.1,27,805/- x 15)	x 15
	Rs.19,17,075/-
Add: General Damages	Rs. 70,000/-
Total	Rs.19,87,075/-
Less – Awarded by ld. Tribunal	Rs. 6,39,380/-
ENHANCEMENT	Rs.13,47,695/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.19,87,075/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 5th August, 2008 till the deposit of the amount before the office of the learned Registrar General.

It is reported that the appellants/claimants have already received Rs.6,39,380/- as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance amount of Rs.13,47,695/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 5th August, 2008 till the deposit of the amount before the office of the learned Registrar General.

Accordingly, the respondent/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.13,47,695/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 5th August, 2008 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant nos.1, 3 and 4 are entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.5,37,075/- (Rs.19,87,075/- – Rs.14,50,000/-) before the learned Tribunal.

The learned Registrar General will disburse the balance amount with interest to Smt. Susmita Panja, Shreya Panja and Subhayan Panja, being the appellant/ claimant nos.1, 3 and 4 in equal share on proper identification.

With the above observation, the appeal, being FMAT 1121 of 2012, is disposed of.

All pending applications, if there be any, also stand disposed of.

A copy of this order be forwarded to the learned Tribunal immediately.

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

(Bibhas Ranjan De, J.)