22-11-2022
Item no.30
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

FMA No.1289 of 2022
Dipali Dehuri & Ors.
-vs-
The Oriental Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy ...for the appellants

Mr. Parimal Kumar Pahari ...for the insurance co.

Informal paper book filed on behalf of the appellants be taken on record.

This appeal is directed against a judgement and award passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 7th Court, Paschim Medinipore in MACC No.292 of 2012 under section 166 of the Motor Vehicles Act, 1988.

Brief fact of the case is as follows. While the victim at about 3.40 a.m. was standing as a night guard of Sijua Bali Khadan, at that time the offending vehicle bearing no.WB29/2782 in a rash and negligent manner dashed him with a great force and as a result of which the victim sustained grievous injuries on his head and body and was taken to block health centre for treatment, where the attending doctor declared him dead.

On account of sudden demise of the victim, the claimants being the parents and sister of the victim filed the claim application under section 166 of the Motor Vehicles Act, 1988 for compensation to the tune of Rs.5,00,000/- along with interest 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.3,16,000/- along with interest from the date of filing of the claim application till realisation.

Being aggrieved by and dissatisfied with the impugned judgement and award, the appellants has filed the present appeal.

Mr Amit Ranjan Roy, learned advocate appearing for the appellants, submits that the learned tribunal erred in considering the age of the victim's mother for adopting multiplier in order to assess the compensation. He further submits that the income of the victim should be considered at the rate of Rs.4,000/- per month as per precedence of this court in the event the accident occurring in the year 2012. Furthermore, it is submitted that the general damages of Rs.30,000/- is also to be taken into account in view of a decision of the Hon'ble Supreme Court made in the case of **National Insurance Company Limited v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

Mr Roy submits that the learned tribunal also failed to grant compensation towards the future prospect at the rate of 40 per cent as per decision of the **Pranay Sethi's case (supra).**

Mr Parimal Kumar Pahari, learned advocate appearing for the insurance company, submits that the decision of the Hon'ble Supreme Court in **Pranay Sethi's case (supra)** is to be followed in assessment of compensation.

With regard to the multiplier, it is found that the learned tribunal basing on the age of the victim's mother has adopted multiplier 17. Indisputably, the victim at the time of accident was 18 years of age. Following the observation of the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121,** as the victim at the time of accident was 18 years of age, the multiplier 18 is to be adopted for calculation of compensation.

As far as the income of the deceased is concerned, the learned tribunal has taken notional income of Rs.3,000/- per month. However, keeping in mind the catena of decisions of this court considering the income at the rate of Rs.4,000/- per month in the event of accident occurring in the year 2012, I am inclined to consider the income of the deceased to the extent of Rs.4,000/- per month.

In view of the decision of the Hon'ble Supreme court in **Pranay Sethi's** case (supra), the claimants being the parents and sister of the victim are entitled to loss of estate and funeral expenses of Rs.15,000/- each.

The other findings of the learned tribunal have not been challenged in the appeal.

In view of the decision of Pranay Sethi's case (supra), since the victim was 18 years at the time of accident and was presumed to be self-employed, an amount equalling to 40 per cent of the annual income of the deceased is to taken into account towards future prospect.

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

Monthly income	Rs.4,000/-
Annual income(Rs.4000x12)	Rs.48,000/-
Less: deduction of 1 /2 towards personal and living expenses	Rs.24,000/-
Add: 40% Future prospect	Rs.9,600/-

Total	Rs.33,600/-
Multiplier 18 (Rs.33,600x18)	Rs.6,04,800/-
General Damages	Rs.30,000/-
Total	Rs.6,34,800/-

Thus the total compensation comes to Rs.6,34,800/-. It is informed that a sum of Rs.3,16,000/- along with interest as granted by the learned tribunal has been deposited by the insurance company.

Hence the claimants are entitled to the balance amount of Rs.3,18,800/- along with interest @ 6% per annum from the date of filing of the claim application till deposit is made.

Accordingly, the first respondent-insurance company, is directed to deposit the balance amount of Rs.3,18,800/- along with interest at the rate of 6% p.a. from the date of filing of the claim application till the date of deposit by way of cheque before the learned Registrar General of this court within six weeks from date.

Learned Registrar General of this court shall disburse the amount in favour of the claimants in equal share, subject to satisfying their identity.

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.

[Bivas Pattanayak, J]