23.12.2022
Sl. No.36
Ct No. 654
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F.M.A. 477 of 2021
IA No.: CAN/1/2018 (Old No.:CAN/889/2018)

Saraswati Sardar & Ors.

Versus

M/s Chola Mandalam MS General Insurance Co. Ltd. & Anr.

Mr. Sima Ghosh
....for the appellants-claimants.

Mr. Debanjan Mukherjee
....for the respondent No. 1-Insurance Co.

This appeal is directed against judgment and award dated 30th August, 2017 passed by learned Additional District Judge cum Judge Motor Accident Claims Tribunal, Fast Track, 4th Court, Diamond Harbour, 24-Parganas (South) in M.A.C. case No. 114 of 2016 granting compensation of Rs. 2,98,500/- in favour of the claimants under section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 31.01.2016 at about 1:30 PM while the victim was proceeding towards Ghatakpukur from Hatugunge by a Motor van and when he reached near Jogaria More under P.S.-Usthi, all on a sudden the offending vehicle bearing registration no. WB-19A/4281 (mini bus) dashed the motor van in a rash and negligent manner. As a result of which the driver of the motor van and the victim sustained severe injuries. The victim thereafter was taken to Diamond Harbour Hospital where he succumbed to his injuries and died. The claimants being the widow and five daughters of the deceased filed claim application for compensation of Rs.12,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

Upon considering the materials on record and the evidence adduced on behalf of the claimants the learned tribunal granted compensation in favour of the claimants to the tune of Rs.2,98,500/-.

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

Ms. Sima Ghosh, learned advocate for appellants-claimants submits that the learned tribunal erred in considering the income of the deceased of Rs. 3,000/-per month which ought to have considered the income at Rs.6,000/-per month. She further submits that an amount equalling to 10% of annual income of the deceased should be taken into account towards future prospect and an amount of Rs.70,000/- towards general damages under the conventional heads of funeral expenses loss of consortium and loss of estate is also to be considered. She further submits that the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd since of number of dependents of the deceased is 6. She further submits that the interest has been allowed as a default clause which should be made from date of filing of the claim application. She submits for enhancement of the compensation amount.

In reply, Mr. Debanjan Mukherjee, learned advocate for respondent No. 1-Insurance Company opposes such prayer for enhancement. He submits that the claimants failed to produce any sort of document in support of income of the deceased and thus learned tribunal has considered the income on notional basis which does not call for interference. In view of the above, he submits that the appeal is liable to be dismissed.

It is found upon hearing that claimants-appellants have challenged the award precisely on four grounds *firstly,* quantum of income determined by the learned tribunal *secondly,* entitlement of the future prospect *thirdly,* amount of deduction towards personal and living expenses and *fourthly* entitlement of general damages.

With regard to the income of the deceased the claimants has in their claim application asserted income of the deceased at Rs.6,000/-per month from the business of the selling vegetables. However, no such documents were produced and the learned tribunal considered the notional income of Rs.3,000/- per month. Be that as it may, considering the price index prevailing at the relevant time and also bearing in mind catena of the decisions of this Hon'ble Court where the accident has taken place in the year 2016, the income was considered at Rs. 5,000/-per month, the income of the deceased-victim should be considered at Rs.5,000/-per month.

Further since the deceased at the time of accident was 53 years and was vegetable seller (self-employed) hence following the observation of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 (4) T.A.C 673(S.C).*** additional amount of 10% of the annual income of the deceased should be taken into account.

As far as the personal and living expenses of the deceased is concerned, learned tribunal deducted 1/3rd of the annual income of the deceased towards personal and living expenses. Following the observation of the Hon'ble Supreme court passed in ***Sarla Verma & Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298*** since the number of the dependents is 6, the deduction towards personal and living expenses of the deceased should be 1/4th.

Further in view of the decision of the Hon'ble Supreme Court in ***Pranay Sethi's Case*** claimants are also entitled to general damages under the conventional heads namely, funeral expenses of Rs.15,000/- , loss of consortium of Rs.40,000/- and loss of estate of Rs.15,000/-.

Further it is found from the impugned judgment that interest has been granted as a default clause. However, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

The other findings of the learned tribunal such as multiplier has not been challenged in this appeal.

<u>Calculation of compensation</u>

Monthly Income Rs.5,000/-
Annual Income..(Rs.5,000/- X 12)..Rs 60,000/-
Add: Future Prospects
@ 10% of total Income............<u>Rs.6,000/-</u>
Annual loss of Income.....................Rs.66,000/-
Less: Deduction of 1/4th of the
Annual Income towards
Personal and living expenses expenses..... <u>Rs.16,500/-</u>
Rs.49,500/-
Adopting multiplier 11
(Rs.49,500/- X 11)............................Rs.5,44,500/-
Add: General Damages........................<u>Rs.70,000/-</u>
Loss of estate...........Rs.15,000/-

Loss of consortium...Rs.40,000/-

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

Total Compensation......................Rs.6,14,500/-

Thus the claimants are entitled to total compensation of Rs.6,14,500/-. It is informed that the claimants have already received Rs.2,98,500/- awarded by the learned tribunal. Thus the claimants are entitled to the balance amount of Rs. 3,16,000/- alongwith interest @6% per annum from the date of filing of the claim application till the deposit of the amount. Further the claimants are also entitled to interest @ 6% per annum on the amount of Rs 2,98,500/- awarded by the learned tribunal from the date of the filing of the claim application till the deposit was made before the learned tribunal.

Respondent no. 1-insurance company is directed to deposit the balance amount of Rs. 3,16,000/- alongwith interest @ 6% per annum on the aforesaid amount from the date of filing of the claim application till the deposit and the interest on the compensation granted by the learned tribunal as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta within a period of seven weeks from date. Upon deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall disburse the aforesaid amount to the claimants in equal share, after making payment of Rs.35,000/-(since Rs.5,000/-has already been received as per order of learned tribunal) as spousal consortium to appellant No.1, widow of the deceased, upon satisfaction of their identity.

Appellants-claimants are directed to deposit *ad valorem* court fees on the enhanced amount of compensation, if not already paid.

With the aforesaid observation the appeal stands disposed of. The impugned judgment and award of the learned tribunal is modified to the aforesaid extent. No order as to cost

All connected applications if any stands disposed of.

Interim order if any stands vacated.

Urgent photostat certified copy if applied for be supplied to the parties upon compliance of all legal necessary formalities.

(Bivas Pattanayak, J.)