**19.12.2022**
**Sl. No. 4**
**Ct No. 654**
**Ali**

**F.M.A.T.425 of 2020**
**IA No: CAN/2/2022**

**Tumpa Mondal & Anr.**
**Vs**
**The Oriental Insurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy
....for the appellants-claimant.
Ms. Gopa Das Mukherjee
.....for the respondent No.1-Insurance Co.

This appeal is directed against the judgment and award dated 14th January, 2020 passed by learned Additional District Judge, Fast track, 2nd Court, Asansol, Paschim Bardhaman in M.A.C Case no.8 of 2016 granting compensation in favour of the claimants amounting to Rs.48,67,408/-along with interest under Section 166 of the Motor vehicles Act, 1988.

The brief fact of the case is that on 2nd April, 2016 at about 6 AM while the victim was proceeding towards his place of work at Sonepur Bazari Project from his residence at Topsi by riding on his motorcycle bearing registration no. WB-38S/8655 and when he reached near Topsi bridge on NH60 at that time the offending vehicle bearing registration no.WB-44D/8768 (Bolero) in a rash and negligent manner dashed the victim from behind as a result of which the victim fell down on the road and sustained fatal injuries on his person. Immediately he was removed to District Hospital at Asansol where the attending doctor declared him brought dead. On account of sudden demise of the deceased-victim the claimants being the widow and minor daughter of the deceased filed claim application for compensation of Rs.60,00,000/- along with interest under Section 166 of the Motor Vehicles Act, 1988.

Upon considering the materials on record and the evidence adduced by the claimants both oral and documentary, the learned tribunal granted compensation in favour of the claimants to the tune of Rs. 48,67,408/- together with interest @ 6% per annum from the date of filing of the claim application till realization.

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

By an order dated 12th December, 2022 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with.

Mr Amit Ranjan Roy, learned advocate for appellants-claimants submits that the learned tribunal erred in not allowing an additional amount of 30% of the annual income of the deceased towards future prospect on the ground that the widow of the deceased (claimant no.1) joined service in ECL on compassionate grounds whereas it ought to have allowed future prospect in favour of the claimants in view of decision of Hon'ble Supreme Court passed in ***Vimal Kanwar & Ors versus Kishore Dan & Ors*** reported in ***(2013) 7 SCC 476.*** He further submits that compassionate appointment is the condition of service of an employee and such appointment has got no correlation with the statutory amount of compensation receivable under the Motor Vehicles Act on account of accidental death of a deceased-victim. In light of his aforesaid submissions he prays for enhancement of the compensation amount.

In reply to the aforesaid contentions raised on behalf of the appellants-claimants, Mrs Gopa Das Mukherjee, learned advocate for respondent no.1-insurance company submits that the learned tribunal after going through the entirety of the facts, circumstances and the evidence placed before it came to a categorical finding that since the widow of the deceased has joined a job in ECL on compassionate grounds hence the claimants are not entitled to receive compensation towards future prospect which should be affirmed. In the aforesaid backdrop she submits for dismissal of the appeal.

Having heard the learned advocates for the respective parties I now proceed to decide the sole issue involved in the present appeal. The primary issue involved in the present appeal is whether the claimants are entitled to receive compensation towards future prospect in the event of appointment of widow of the deceased (claimant no.1) on compassionate grounds or not.

On going through the impugned judgment under challenge it is found that the learned tribunal disallowed compensation under future prospect on the ground that the claimant had already joined the job in ECL on compassionate ground. At this stage it would be relevant to reproduce the observation of Hon'ble Supreme Court in ***Vimal Kanwar's Case (supra)*** at paragraph no.20 as hereunder.

> *"20.The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction." "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an*

> *employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."*

Bearing in mind the aforesaid observation of the Hon'ble Supreme Court even if one of the dependent, widow of the deceased, joins service on compassionate grounds it cannot be stated to be an advantage receivable by the heirs on account of death of the victim and such appointment has got no relation with the amount receivable under a statute occasioned on accidental death. Such appointment on compassionate grounds may have relation with the death of the deceased but it does not necessarily have relation with the accidental death of a deceased victim. Accordingly, the finding of the learned tribunal in such regard is liable to be set aside. Since the deceased victim at the time of accident was 44 years of age and was on permanent job hence following the observation of Hon'ble Supreme court in ***National Insurance Company Limited versus Panay Sethi and others*** reported in ***2017 ACJ 2700*** an amount equalling to 30% of the annual income of the deceased should be taken into account towards future prospect.

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

The calculation of compensation is made hereunder:-

**Calculation of compensation**

Monthly Income ..............................Rs.42,834/-

Annual Income..(Rs.42,834/- X 12)..Rs 5,14,008/-

Add: Future Prospects
@ 30% of total Income...Rs.1,54,202/-(approx)
Annual loss of Income.....................Rs.6,68,210/-

Less: Deduction of 1/3rd of the
Annual Income towards
personal and living expenses.. Rs.2,22,736/-(approx)
Rs.4,45,474/-

Adopting multiplier 14
(Rs.4,45,747/- X 14).......................Rs.62,36,636/-
Add: General Damages.........................Rs.70,000/-

Loss of estate...........Rs.15,000/-
Loss of consortium...Rs.40,000/-
Funeral Expenses.....Rs.15,000/-

**Total Compensation....................Rs.63,06,636/-**

Thus the claimants are entitled to total compensation of Rs.63,06,636/-. It is informed that the claimants have already received the amount of Rs. 48,67,408/- along with interest. Accordingly the claimants are entitled to the balance amount of Rs. 14,39,228/- alongwith interest @ 6% per annum on the aforesaid amount from the date of filing of the application (i.e 22.6.2016) till the deposit of the amount.

Respondent no. 1-insurance company is directed to deposit the balance amount of Rs. 14,39,228/- alongwith interest @ 6% per annum on the aforesaid amount from the date of filing of the application (i.e 22.6.2016) till the deposit of the amount by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six 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 proportion on satisfaction of their identity.

Appellant no.1, mother and natural guardian of minor appellant no.2, shall receive the share of the minor and keep the share of the minor in the fixed deposit scheme of any nationalized bank or post office till the attainment of majority by the said minor.

Appellants 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 allowed. 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 satisfaction of all legal necessary formalities.

**(Bivas Pattanayak, J.)**