IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

02.02.2023
SL No.3 & 4
Court No. 654
Ali

F.M.A. 566 of 2017

The New India Assurance Co. Ltd.
Vs.
Smt. Sushama Mandal & Ors.
With
COT 17 of 2017
Smt. Susanta Mandal & Anr.
Vs.
New India Assurance Co. Ltd. & Anr.

Ms. Gopa Das Mukherjee
...for the appellant-Insurance Co.

Mr. Amit Ranjan Roy
...for the respondents-claimants.

This appeal is preferred against the judgement and award dated 24th February, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Tamluk, Purba Medinipur in M.A.C Case no. 102 of 2013 (289 of 2011) granting compensation in favour of the claimants to the tune of Rs. 4,52,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

Affidavit-of-service filed on behalf of appellant-insurance company is taken on record. The track consignment report of the postal authority annexed to the affidavit shows that the item sent to respondent no.3-owner of the offending vehicle has been delivered.

The brief fact of the case is that on 19th September, 2011 at about 7 PM while the victim was going through unmetalled portion of Haldia-

Mecheda Pitch Road at that time the offending vehicle bearing registration no. WB-23B/6762 (tanker) which was proceeding from Haldia side to Mecheda in an excessive high-speed and in the rash and negligent manner dashed the victim with great force as a result of which the victim sustained severe injuries all over his body and head. The local people shifted the victim to Purba Medinipur District Hospital where he succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the parents of the deceased-victim filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 4,50,000/-together with interest.

The claimants in order to establish their case examined two witnesses and produced number of documents which has been marked as **Exhibits 1 to 7** respectively.

The appellant-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs. 4,52,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988 in favour of the claimants.

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

Respondent nos. 1 & 2-claimants also filed cross-objection against the judgment and award for enhancement of compensation amount being COT 17 of 2017.

Mrs Gopa Das Mukherjee, learned advocate for appellant-insurance company submits that on the relevant date of accident the driver of the offending vehicle did not have valid and effective driving license to drive such vehicle and was rather holding a fake and false license and therefore the insurance company cannot be saddled with the liability to pay compensation amount. She further submits that the deceased died a bachelor and therefore the deduction towards personal and living expenses of the deceased should be half instead of one-third considered by the learned tribunal. In light of her aforesaid submissions, she prays for setting aside of the impugned judgment and award.

In reply to the aforesaid contentions raised on behalf of the appellant- insurance company, Mr Amit Ranjan Roy, learned advocate for respondents-claimants submits that there are neither any specific plea nor evidence led to establish that the driver of the offending vehicle was not having effective and valid driving license to drive such vehicle and thus the aspect raised in this regard does not have any bearing. He further submits that since the accident has taken place in the year 2011, considering the price index prevalent during the said period the income of the deceased should be taken at Rs. 4,000/-per month. Moreover he submits that the learned tribunal erred in taking into account the age of the mother for adopting multiplier whereas it ought to have considered the age of the deceased for selecting the multiplier and since at the time of accident the deceased was aged 22 years the multiplier should be 18. Furthermore, he submits that the claimants are also entitled to an additional amount equalling to 40% of annual income of the deceased towards future prospect and are also entitled to general damages under the conventional heads of funeral expenses and loss of estate amounting to Rs.30,000/-. He prays for enhancement.

Having heard the learned advocates for the respective parties, it is found that the insurance company in the present appeal has raised two-fold grounds *firstly,* that since the driver was not holding valid and effective driving license to drive such vehicle, the insurance company cannot be saddled with liability to compensate and *secondly*, the deduction towards personal and living expenses of the deceased should be half instead of one-third.

With regard to the first issue pertaining to driver not having effective driving license, it is found that there are no such specific pleadings in the written statement filed by the insurance company to that effect. During the course of proceedings, the claimants produced seizure list **(Exhibit 9)** showing seizure of one driving license being D.L no.49286/05 dated 13.12.2005 in name of Anil Paswan valid up to 12.12.2011. The insurance company in the proceedings before the learned tribunal did not lead any evidence to establish the fact that the driving license of the driver of the offending vehicle noted in the seizure list is fake or false. In the absence of specific plea and cogent evidence the argument advanced on behalf of insurance company in this regard falls short of merit.

So far as the deduction towards personal and living expenses is concerned, it is found that the learned tribunal deducted one-third of the annual income of the deceased towards his personal and living expenses. Admittedly, the deceased at the time of accident was a bachelor. Therefore, following the observation of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298*** the deduction towards personal and living expenses of the deceased should be half instead of one-third.

In the cross-objection the respondents-claimants have raised following grounds, *firstly,* the income of the deceased should be considered at Rs.4,000/-instead of Rs.3,500/-granted by the learned tribunal; *secondly,* that the multiplier to be adopted should be based on the age of the deceased instead of age of the mother, *thirdly,* entitlement of the claimants of an additional amount equalling to 40% of annual income of the deceased towards future prospect; *lastly*, general damages under the conventional heads of Rs.30,000/-.

As far as the income of the deceased is concerned, it is found that the learned tribunal has considered the income of the deceased-victim at Rs.3,500/- per month. Be that as it may, bearing in mind the price index prevalent during the said period and also keeping in mind catena of decisions of this Court where the income of the victim was considered at Rs.4,000/-per month in the event accident taking place in the year 2011, I am inclined to consider the income of the deceased-victim at Rs. 4,000/-per month.

With regard to the multiplier, it is found that the learned tribunal adopted multiplier of 16 basing on the age of the mother. However, in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** as well as subsequent decision of Hon'ble Supreme Court in ***M/s Royal Sundaram Alliance Insurance Company Ltd. versus Mandala Yadagari Gour & Ors*** reported in ***(2019) 5 SCC 554*** the age of the deceased is to be taken into consideration for selecting multiplier and not the age of the parents. As per the voter's identity card **(Exhibit 5)** the date of birth of the deceased victim is 8.5.1989. Therefore, on the date of accident on 19.9.2011 the deceased was aged 22 years, 4 months and 11 days. Accordingly, in view of observation of Hon'ble Supreme Court made in ***Sarla Verma's case (supra)*** the multiplier to be adopted should be 18 instead of 16.

Further in view of ***Pranay Sethi's case (supra)*** since at the time of accident the deceased was aged more than 22 years and was self-employed, hence the claimants are entitled to an additional amount equalling to 40% of the annual income of the deceased towards future prospect.

Moreover, as per the decision in ***Pranay Sethi's case (supra)*** the claimants are also entitled to general damages under the conventional heads of funeral expenses and loss of estate of Rs.15,000/- each.

Keeping in mind the aforesaid factors the calculation of compensation is made hereunder.

<u>Calculation of compensation</u>

Monthly Income....................................Rs.4,000/-
Annual Income.....(Rs.4000/- X 12)......Rs. 48,000/-
Add: 40% of annual Income
towards future prospect....................Rs.19,200/-
Annual loss of Income........................Rs.67,200/-
Less: Deduction 1/2 of the Annual Income
towards personal and living expenses..... <u>Rs.33,600/-</u>
Rs.33,600/-
Adopting multiplier 18
(Rs. 33,600/- X 18)...............................Rs.6,04,800/-
Add: General Damages................Rs.30,000/-
Loss of esta............Rs.15,000/-
Funeral Expenses....Rs.15,000/-
Total Compensation...........................Rs.6,34,800/-

Thus, the claimants are entitled to compensation of Rs. 6,34,800/-together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 31.10.2011) till deposit. It is informed that the claimants have already withdrawn Rs.1,00,000/-by virtue of order dated 8.3.2017. It is found that the insurance company has deposited statutory amount of Rs.25,000/- vide OD challan no. 221 dated 27.4.2015 as well as an amount of Rs. 4,27,500/- vide OD challan no. 740 dated 24.6.2015. Both the aforesaid deposits along with accrued interest (before and after withdrawal) shall be adjusted against the entire compensation amount and interest indicated above.

The learned tribunal granted compensation of Rs. 4,52,500/- together with interest. Accordingly, appellant-insurance company is directed to deposit the enhance amount of compensation of 1,82,300/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall release the compensation amount in favour of the respondents-claimants in equal proportions on satisfaction of their identity and payment of *ad valorem* court fees on the amount of compensation, if not already paid.

With the aforesaid observation, the appeal and the cross-objection stands disposed of. The impugned judgment and award of the learned tribunal stands modified to the above extent. No order as to cost.

All connected application, if any, stands disposed of.

Interim orders, if any, stands disposed of.

Let a copy of this order alongwith lower court records be transmitted to the learned tribunal for information.

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

(Bivas Pattanayak, J.)