14.06.2023
Ct. no.654
Item no.8
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 624 of 2019

The National Insurance Co. Ltd.
Vs.
Swati Pal Ors.

Mr. Rajesh Singh
...for the appellant-insurance company

Mr. Purna Chandra Maiti
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 17th July, 2017 passed by the learned Judge, Motor Accident Claims Tribunal, IInd Bench, City Civil Court, Calcutta, in MAC case no.1 of 2013 granting compensation of Rs.1,55,89,408/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 22nd November, 2012 at about 19:30 hours while the victim was returning to his home situated at Kalyani from Kolkata through Kalyani Expressway after attending his job by his own vehicle bearing registration no. WB-40V-9605 keeping left side and when he reached near Bandipur the offending vehicle bearing registration no. WB-03B-2015 (truck) coming from Kalyani side in a rash and negligent manner dashed the vehicle of the victim from wrong side resulting in severe injuries to the victim who on the date of accident was driving the vehicle. Immediately the victim was removed to Bandipur BPHC by local people where the attending doctor declared him brought dead. On account of sudden demise of the deceased, the widow, minor son and parents of the deceased filed application for compensation of Rs. 2,50,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined five witnesses and produced documents, which have been marked as **Exhibits 1** to **33** (series) respectively.

The appellant-insurance Company did not adduce any evidence.

By an order dated 20th June, 2019, service of notice of appeal upon the respondent no.5, owner of the offending vehicle, has been dispensed with.

Upon considering the materials on record and evidence adduced by the claimants, the learned Tribunal granted compensation of Rs.1,55,89,408/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the appellant-insurance company has preferred the present appeal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that the victim on the date of accident was driving his own car and, therefore, has contributed to the act of negligence in the said accident and keeping in mind the such aspect the awarded sum is required to be scaled down so far as the contributory negligence of the victim is concerned. He further submits that the learned Tribunal erred in deducting 1/4th of the annual income of the deceased towards personal and living expenses instead of 1/3rd since there was no evidence that the father was dependant on the income of the victim rather the evidence shows that he is a pensioner. Furthermore, it is submitted that since at the time of accident the victim was 34 years old, hence, following decision of the Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298***, the multiplier should be 16 instead of 17 adopted by the learned Tribunal. He further submits that the learned Tribunal erred in granting general damages to the tune of Rs.2,25,000/- which should be Rs.70,000/- under the conventional heads in view of the decision of ***National Insurance Company Limited versus Pranay Sethi and Others,*** reported in ***2017 ACJ 2700***. In the light of his aforesaid submissions, he prays for modification of the impugned award granted by the learned Tribunal.

In reply to his aforesaid submissions, Mr. Purna Chandra Maity, learned advocate for the respondents-claimants submits that from the evidence on record there is nothing to suggest that the victim was guilty of contributory negligence in the said accident and the evidence of sole eye-witness clearly manifest of negligence on the part of the driver of the offending vehicle. He further submits that the father of the victim is a retired person and was dependant on the income of the victim and therefore the deduction towards personal and living expenses should be $1/4^{th}$ as has been rightly held by the learned Tribunal.

Having heard the learned advocates for the respective parties, it is found that the appellant-insurance company has raised the following issues. *Firstly,* whether the victim was guilty of contributory negligence in the said accident. *Secondly*, whether the deduction towards personal and living expenses should be $1/3^{rd}$ instead of $1/4^{th}$ and *lastly,* whether the general damages under the conventional head should be Rs.70,000/- instead of Rs.2,25,000/- granted by the learned Tribunal.

With regard to the first issue pertaining to the contributory negligence of the victim, it is found from the written statement of the appellant-insurance company that it has categorically raised the defense plea that the victim was responsible for the alleged accident. However, the insurance company has not led any cogent evidence to establish such defence plea of contributory negligence. The claimants have adduced the evidence of eye-witness PW-5, Sabir Ali, who categorically deposed that the accident happened due to fault of driver of the offending vehicle. Such evidence of PW-5 has remained unchallenged in cross examination. There is no contrary evidence on record to disbelieve the evidence of PW-5. In the absence of any evidence to show any wrongful act or omission on the part of the deceased victim which has contributed either to the accident or nature of injuries sustained, the victim cannot be held guilty of contributing negligence (***see Mohammed Siddiquie & Anr. versus National Insurance Co. Ltd.*** reported in ***Vol. 1(2022) ACC 345 (SC)***). Further, it is relevant to note that after conclusion of investigation, the investigating agency has submitted charge sheet against the driver of the offending vehicle under Sections 279/338/ 304(A)/427 of the Indian Penal Code. Thus, the argument with regard to contributory negligence of the victim in the said accident advanced by learned advocate for appellant-insurance company falls short of merit.

So far as the deduction towards personal and living expenses of the deceased is concerned, although it is found from the claim application that the number of claimants are 4 including the father of the deceased, yet, from the evidence on record, there are no iota evidence that the father was dependant on the income of the deceased. Rather, the evidence of PW-1 shows that her father-in-law is a retired government employee and he draws pension of Rs.20,000/- to Rs.25,000/- per month. In *Sarla Verma (supra),* the Hon'ble Supreme Court has categorically observed that the father is likely to have his own income and will not be considered as a dependant. In case at hand since the father is drawing pension and at the same time there is no evidence on the dependency, the father cannot be treated as dependent on the income of the deceased. In view of the above, the number of dependants of the victim comes to 3 and therefore deduction towards personal and living expenses should be $1/3^{rd}$ instead of $1/4^{th}$ adopted by the learned Tribunal.

The next issue pertains to multiplier to be adopted in the facts of the case. Admittedly, at the time of accident, the victim was 34 years of age. Following observations of the Hon'ble Supreme Court in *Sarla Verma (supra)* the multiplier should be 16 instead of 17 adopted by the learned Tribunal.

The last issue relates to the extent of general damages. It is found from the impugned judgment that the learned Tribunal granted Rs.2,25,000/- towards general damages. However, following principles laid down in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

The other factors have not been challenged.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Annual Income	Rs.8,15,132/-
Add: 50% of annual income towards future prospect	Rs.4,07,566/-
Total income	Rs.12,22,698/-
Less: 1/3rd towards personal and living expenses	Rs.4,07,566/-
Net yearly income	Rs.8,15,132/-
Multiplier 16 (Rs.8,15,132/- x 16)	Rs.1,30,42,112/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total amount	Rs.1,31,12,112/-

Thus, the claimants are entitled to Rs.1,31,12,112/- together with interest @ 6% per annum from the date of filing (02.01.2013) till the date of withdrawal of the respective amount.

In compliance with the order dated 2nd August, 2018, the insurance company has already deposited an amount of Rs.2,37,69,272/- and also deposited the statutory amount of Rs.25,000/-.

By order dated 20th June, 2019, 50% of the awarded sum was directed to be released in favour of the respondents-claimants and admittedly the respondents-claimants have received the said amount. The balance amount was directed to be re-invested. Accordingly, the amount reinvested together with accrued interest and the amount already received shall be adjusted against the entire compensation amount and the interest.

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

Learned Registrar General High Court, Calcutta shall release the rest amount of compensation and interest in favour of the claimants-respondents in the following proportion, namely, 1/2 (half) in favour of the respondent no.1 and balance amount in equal shares in favour of rest respondents, after making payment of Rs. 40,000/- to the respondent no. 1, widow of the deceased, towards spousal consortium, upon satisfaction of their identity and payment of *ad valorem* Court fees, if not already paid.

After adjustment of the aforesaid amount, if any balance amount is to be paid, the insurance company shall deposit the same.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the appellant-insurance company.

Respondent no.1, being the mother and natural guardian of minor respondent no.2, shall receive the share of the minor on his behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minor.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)