

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 865 Of 2012

Mir Alauddin and Anr.

Versus

The Oriental Insurance Co. Ltd. and Anr.

For the Appellants : Mr. Uday Sankar Chattopadhyay, Adv.
Ms. Rajeshree Tah, Adv.
Ms. Afrin Nahar Mondal, Adv.

For the Respondents/Ins. Co. : Ms. Sucharita Paul, Adv.

Heard on : 07.12.2023

Judgment on : 18.12.2023

Ajay Kumar Gupta, J:

1. This instant appeal has been filed by the appellants/claimants being aggrieved and dissatisfied with the judgment and award dated 26th day of July, 2010 passed by the Learned Judge, 5th Motor Accident Claims Tribunal, Burdwan in Motor Accident Claim Case No. 101 of 2008 (321 of 2008) thereby the learned Tribunal allowed the claim application and awarded a sum of Rs. 1,84,500/- along with simple interest at the rate of 8% per annum from the date of filing of the case i.e. from 25.09.2008 till the date of its final payment in equal share and appellant no. 1 Mir Alauddin would get extra sum of Rs. 5,000/- from the insurance company in an application filed under Section 166 of the Motor Vehicles Act, 1988 on the death of the deceased Lutfa Bibi cause due to motor traffic accident.

2. Brief facts are relevant for disposal of the instant case is as follows: On 13.04.2008 at about 4.20 pm, when the deceased accompanied by her brother was proceeding towards Khirgram bus stand and when they reached near bus stand all of a sudden offending vehicle being Tata Indica Car bearing No. WB-42H/4186 coming in a high speed and in rash and negligent manner dashed against the victim resulting in severe bleeding injuries. Deceased succumbed to such injuries in the Burdwan Medical Hospital. Due to sudden demise of the deceased, the claimants suffered

great loss, pain and agony. Accordingly, appellants claimed a sum of Rs. 6 lakhs from the Insurance Company and filed a claim application before the Learned Tribunal. Over the said accident, a Mangalkote P.S. Case No. 44/08 dated 05.05.2008 under Section 279/304A of the IPC was registered and finally culminated to the final charge-sheet against the driver of the offending vehicle bearing registration no. WB-42H/4186, when prima facie case has been established under Sections 279/304A IPC.

3. Mr. Chattopadhyay, learned advocate appearing on behalf of the appellants/claimants submitted though the learned Tribunal awarded a sum of Rs. 1,84,500/- but that amount ought to be higher than the awarded amount. The learned Tribunal did not consider the actual income as claimed by the claimant to the tune of Rs. 3,000/- per month. If it would have been considered victim's income as Rs. 3,000/- per month, the amount of compensation would have been higher than the awarded amount.

4. It is further submitted that the Hon'ble Supreme Court has already settled law in the year 2008 that even an unskilled labour can earn Rs. 100/- per day. In the present case, the deceased was a house wife, her income should have more than Rs. 3,000/- per month. He prays Rs.

3000/- per month may be accepted as actual income of the victim as the accident took place in the year 2008. It is further submitted that it is very difficult to produce document or salary certificate of a house wife. If her income accepted as Rs. 3,000/- the amount of awarded compensation would be enhanced.

5. It is further submitted in addition to that the claimants are also entitled to get future prospects and actual general damages in view of the proposition laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**¹. He prays for compensation towards future prospect and general damages in view of the proposition laid down by the Hon'ble Supreme Court.

6. On the other hand, Ms. Sucharita Paul, learned Advocate appearing on behalf of the respondents/Ins. Co. submitted that there is no disputes regarding observations made by the learned Tribunal with regard to manner of accident and death of the victim, as she suffered injuries in the Motor Traffic Accident. The learned Tribunal rightly assessed the income to the tune of Rs. 15,000/- per annum as notional income, when the claimants failed to prove the actual income of the victim. However, she concedes that the claimants are entitled to

¹ (2017) 16 SCC 680

compensation towards future prospects and general damages. She argued that the learned Tribunal wrongly assessed the multiplier 18 though the actual multiplier would be 17 as per age considered by the Learned Tribunal on the basis of documentary evidences.

7. Having heard the rival submissions of both sides and on perusal of the record, this Court finds there is no dispute regarding manner of accident and death of the victim. There is also no dispute regarding age and deduction towards her personal expenses. This Court has to decide only with regard to the income of the victim, future prospects, multiplier and general damages on the basis of argument raised by the parties. It transpires from the evidence adduced by the claimants; victim was a homemaker and she belongs to no income group. However, learned advocate for the appellants/claimants submitted that learned Tribunal wrongly assessed her income as Rs. 15,000/- per annum as notional income, which is very low though the claim of the appellants is Rs. 3000/= per month. Claimants claimed her income as Rs. 3000/- per month which is seems reasonable and genuine.

8. This Bench already observed in another case in **Pratima Sahoo Vs. Cholanandalam MS General Insurance Co. Ltd. & Anr. [FMAT (MV) 59 of 2022]** to accept his contention that it is unexpected from a home

maker to prove her actual income by producing document or salary certificate. So, the learned Tribunal had erred in accepting her income as Rs. 15,000/- per month as a notional income of a house wife. A home maker's job requires more contribution than a normal job or service holder. She has to do household chores and also take cares other family members for entire day as a result her income cannot be equated with earnings of a normal person. Her income cannot be calculated in the form of monthly salary or wages. Therefore, her income can be safely accepted as claimed by the Claimants i.e. Rs. 3,000/- per month. This Court also convince with the submission of the Ld. Advocate appearing on behalf of the appellants. So, her income as claimed by the claimants as Rs. 3000/- is a genuine and reasonable and that can be considered safely without any hesitation.

Furthermore, the accident occurred in the year 2008 and the Hon'ble Supreme Court in **Laxmi Devi & Others vs. Mohammad Tabbar & Another**² has also held even an unskilled labour can earn Rs. 100/- per day which comes to Rs. 3000/- per month. Accordingly, this issue is decided in favour of the appellants. Her actual income may be considered as Rs. 3,000/- per month. Regarding other heads like future prospects and general damages, it is well settled proposition declared by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the aforesaid **Pranay**

² 2008 (2) T.A.C. 394 (SC)

Sethi's case (supra) has laid down the proposition towards future prospect and method of calculation, inter alia, as follows:

“In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The Established income means the income minus the tax component”.

9. It is further specifically held in the said judgment that reasonable figures on conventional heads, namely, Loss of Estate, Loss of Consortium and Funeral Expenses should be Rs. 15,000/=, Rs. 40,000/= and Rs. 15,000/= respectively also to be paid. I find substance in the submissions of learned advocate for appellants/claimants in this regard. Consequently, appellants are also entitled to get those figures in the head mentioned above Rs. 15,000/= (as loss of estate), Rs. 40,000/= (as consortium) and Rs. 15000/= (as funeral expenses). Therefore, Rs. 70, 000/= may be safely

accepted as General Damages as claimed by the appellants. Whereas the Ld. Tribunal only allowed General Damages to the tune of Rs. 9,500/-.

10. In the light of above observations and proposition laid down by the Apex Court, appellants are also entitled to get an additional amount towards future prospect @ 40% of the annual income of the deceased, who was below the age of 40 years. Claimants are also entitled to Rs. 70,000/- as General damages.

11. Last issue remains here to decide whether a multiplier would be 17 or 18. Claimants have proved that the victim was 27 years at the time of accident. Claimants also produced Post Mortem Report and Voter Identity Card of the victim, these documents suggested that the victim's age was Rs. 27 years old. So, it can be safely accepted that the victim was died at age of 27 years which comes within the age group of 26 to 30 years and for that multiplier would be 17 in view of observation made in **Sarla Verma and others vs. Delhi Transport Corporation and another** and subsequently by Larger Bench of the Hon'ble Supreme Court affirmed the said manner of selection multiplier in **National Insurance Co. Ltd Vs. Pranay Sethi & Others** by indicating therein that the selection of multiplier shall be as indicated in the paragraph in **Sarla Verma's** case as inter alia as follows:

M-18 for (15 to 25 years)

M-17 for (26 to 30 years)

M-16 for (31 to 35 years)

M-15 for (36 to 40 years)

M-14 for (41 to 45 years)

M-13 for (46 to 50 years)

M-11 for (51 to 55 years)

M-9 for (56 to 60 years)

M-7 for (61 to 65 years)

M-5 for (66 to 70 years)

12. Keeping in mind the above observations, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Add: 40% Future Prospect	Rs. 1,200/-
Total Income	Rs. 4,200/-
Annual Income (4,200/- X 12)	Rs. 50,400/-

Multiplier 17 (Rs. 50,400 X 17)	Rs. 8,56,800/-
Less 1/3 rd for personal expenses	Rs. 2,85,600/-
Total Income after deduction	Rs. 5,71,200/-
Add: General Damages	Rs. 70,000/-
Total amount after adding general damages	Rs. 6,41,200/-
Less Principle awarded received	Rs. 1,89,500/-
Total Compensation after Deduction	Rs. 4,51,700/-

13. Thus, the appellants/claimants are further entitled to get enhanced compensation amount to Rs. 4,51,700/= (Rs. Four Lakhs fifty-one thousand seven hundred only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 25.09.2008 till final payment.

14. It is informed that the appellants/claimants have already received the compensation amount of Rs. 1,89,500/- in terms of the order of the learned Tribunal as such interest would be further calculated on the

aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. from 25.09.2008 till final payment, if not paid earlier.

15. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 4,51,700/= (Rs. Four Lakhs fifty-one thousand seven hundred only) and the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

16. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the enhanced awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equally share to the claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid.

17. The impugned judgment and award of the learned Tribunal dated 26th July, 2010 is modified to the extent only as aforesaid.

18. With the above observations, the instant appeal being **FMA 865 of 2012** stands disposed of without order as to costs.

19. Let a copy of this Judgment along with Lower Court records be sent back to the learned Tribunal forthwith for information.

20. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)