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FMA 448 of 2011
IA No. CAN 1 of 2010 (Old No. CAN 7930 of 2010)

V. Ramraj & Anr.
Vs
New India Assurance Company Ltd. Anr.

Mr. Probal Mukerjee. Sr. Adv.

Mr. Suhrid Sur,

... For the applicants/claimants

Ms. Gopa Das Mukherjee

... For the respondent no.1./Insurance Co.

This appeal is directed against the judgment passed by Motor Accident Claim Tribunal, Additional District Judge, 12th Court, Alipore in connection with MACC No. 368 of 2003 under Section 166 of the Motor Vehicle Act, 1988, whereby learned judge awarded compensation to the tune of Rs. 7,74,732.

One claim petition under Section 166 was filed on account of death of one V. Rama Devi in an accident alleged to have been taken place on 16.07.2003 at about 9.15 A.M., while the victim was crossing of Jawaharlal Nehru Road and Shakespeare Sarani near Birla Planetarium at Kolkata. At the relevant point of time bus of route No. 41B bearing registration No. WBS-4769 ran over the said V. Rama Devi. She was taken to hospital and declared dead. At the time of accident she was an employee of Hindustan Lever Ltd, Kolkata and used to earn gross salary was Rs.11,920.83/- per

month and net salary Rs. 10,373/- per month. She was aged about 48 years at the time of accidental death. That is why husband and son of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation to the tune of Rs.59,97,204/- (after amendment of the claim amount of Rs.51,81,497).

Owner of bus did not contest the claim application whereas insurer i.e. New India Assurance Company Limited contested the claim petition by filing written objection denying all materials averments of the claim petition contending, inter alia, that accident took place due to laches on the part of the victim and claimants are not entitled any compensation as prayed for.

To prove the case, claimants examined five witnesses namely the husband of the deceased as PW-1, Haripada Roy, a traffic constable, as PW-2, Amal Kumar Mondal, another traffic constable, as PW-3, Satyendranath Chakraborty one of the colleagues of the deceased as PW-4 and one Goutam Mukherjee, Accounts Executive of Hindustan Lever Ltd., as PW-5.

PW-1, in course of his evidence, corroborated all the averments of the claim petition. PW-2 and PW-3 testified in their respective evidence that on the alleged day of accident they were performing their duty in the Shakespeare Sarani and Jaharlal Nehru Road crossing.

At that time the vehicles stopped at the signal and pedestrian were crossing Jaharlal Nehru Road from Birla Planetarium towards Shakespeare Sarani and vice versa. The victim was also amongst them but before crossing the road signal was reversed victim was ran over by bus bearing no. WBS-4769. She was taken to SSKM Hospital where she succumbed to injuries.

PW-4 testified post occurrence incidents i.e. formalities after death of V. Rama Debi.

PW-5 proved the salary of the deceased.

In course of evidence, a good number of documents were admitted in evidence including the Injury Report, Death Certificate, Postmortem Report, First Information Report, Chemical Examination Report of the vehicle, Pay Slip of the deceased etc.

Learned Tribunal after evaluation the entire evidence on record together with the documents returned his finding that claimants were entitle to compensation to the tune of Rs.7,74,732/-. Learned Judge has assessed the compensation on the net salary in stead of gross salary after applying multiplier 13.

The appeal has been preferred on the issue of quantum of compensation assessed by the learned Tribunal. It is submitted by Mr. Probal Mukerjee, learned senior advocate, appearing on behalf of the claimants, submitted that the learned judge ought to have been considered the gross income of the deceased

after deducting the professional tax only. That apart, learned judge did not consider the future prospect as well as general damages in view of the principle laid down in the case of ***National Insurance Co. Ltd vs. Pranay Sethi and Ors.*** reported in **2017 ACJ 2700**.

Learned advocate Ms. Gopa Das Mukherjee appearing on behalf of the Insurance Company supported the judgment passed by the learned Tribunal.

So far as accidental death of the deceased is concerned, no specific argument has been advanced on behalf of the parties to this appeal.

However, considering the evidence of PW-2 and PW-3 together with First Information Report before the police, I do not find any reason to discuss further on the issue. PW-2 and PW-3 has proved, in course of their evidence, that accident took place due to rash and negligent driving of the bus bearing no. WBS-4769.

So far as the income of the deceased is concerned, PW-5 testified in the case and proved the salary of the deceased at the time of accidental death. It is not disputed that her gross salary 11,920.83/, and it is also seen from the record that Rs.110 was deducted towards professional tax. Therefor, income of the deceased ought to have been assessed after deducting the professional tax from the gross salary. That apart claimants are also entitled to future prospect of 25% of the income of the deceased in terms of age of the

deceased at the time of death as well as general damages of Rs.30,000/- in view of the principle laid down in ***Pranay Sethi (supra)***.

In the aforesaid view of the matter I find it necessary to modify the award as follows.

1. Annual Income 11,810.83 x12	= Rs.1,41,732
2. Deduction 1/3 (1,41,732- 1/3)	= Rs. 94,488
3. Multiplier is 13 (94488 x13) (age – 48 years)	= Rs.12,28,344
4. Add Future prospect is 25% (12,28,344 x 25%) = Total	= Rs. 12,28,344 + Rs. 3,07,086 Rs.15,35,430/-
5. Add General damages Total	+ 30,000/- Rs. 15,65,430/-
Already received	Rs. 7,74,732/-
Balance amount	Rs. 7,90,698/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs. 15,65,430/-. It is reported that the appellants/claimants has already received Rs.7,74,732/- awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs. 7,90,698/- along with interest @6% per annum from the date of filing of the claim petition, i.e. on 7.11.2003 till the deposit of the amount.

Accordingly, the respondent no.1/ New India Assurance Company Ltd is directed to deposit the

enhanced compensation amount of Rs. 7,90,698/- along with interest 6% per annum from the date of filing of the claim petitioner i.e. 7.11.2003 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants are entitled to withdraw the balance compensation amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the claimant no. 2 i.e. husband (J. Venkataramanan) of the deceased on proper identification and proof.

With the above observation, the appeal being **FMA 448 of 2011** is disposed of.

All pending applications, if there be any, stands disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)