

IN THE HIGH COURT AT CALCUTTA**Appellate Side****Present: - Hon'ble Mr. Justice Subhendu Samanta.****F.M.A No. – 668 of 2012****IN THE MATTER OF****The new Assurance Co. Ltd.****Vs.****Smt. Sahana Bibi & Ors.****For the Appellant : Mr. Gopa Das Mukherjee, Adv.****For the Respondent : Mr. Krishanu Banik, Adv.****Judgment on : 22.06.2023****Subhendu Samanta, J.**

The instant appeal is directed against an award passed u/s 163 A of Motor Vehicles Act by the Motor Accident Claims Tribunal –cum- Additional District Magistrate Fast Track 3rd Court Tamluk, Purba Medinipur in MAC Case No. 21 of 2010.

The brief fact of the case is that the predecessor of the claimants/respondents namely Golam Ajahar Sk. on 4th February 2007 at about 02:00 P.M. was going to Nandigram as a helper of a Mini Truck being No. – WB/290634 from Teropokhya to Nandigram. The said vehicle was running with extreme high speed endangering to human life and safety.

When the said vehicle reached at Bayal village it capsized on the left side on the road as a result the victim sustains serious injury all over his body and succumbed to his injuries on the way to the hospital. Thus, the claim case was preferred before the Learned Tribunal u/s 163(A) of Motor Vehicles Act. The Learned Tribunal after hearing the parties and after taking evidences allowed the claim case directing the present appellant to pay compensation to the claimant/respondents amounting to Rs. 400000/-

Being aggrieved and dissatisfied with that award the instant appeal has been preferred by the insurance company.

Learned Advocate for the Insurance company appellant submitted before this court that the award passed by the Learned Tribunal is wholly arbitrary whimsical and bad in law. No quantum of assessment was made by the Learned Tribunal in passing the impugned award. She further raised an objection that the applicable multiplier of this case would be 11. Considering the age of the deceased as 54 according to the PM report. The Learned Advocate for the appellant also submitted that the present victim being the helper/khalasi of the mini track is entitled to compensation according to Workmen Compensation Act 1923.

Learned Advocate for the claimant respondents raised strong objection and submitted that the Learned Tribunal did not make the assessment for providing just compensation to the claimants but in this case the sole bread earner of the family of the claimant/respondent has died in a road traffic accident and the claimants preferred an application u/s 163 A of the Motor Vehicles Act. The Learned Tribunal was created under the provisions of Motor Vehicles Act to provide just and proper compensation to the heirs of the victim of a RTA. He further submitted that the applicable multiplier of this case would be 13 according to the voter identity card of the deceased.

Apart from computation of just and proper compensation, the single point left to decide in this appeal is **“when there is no document to prove of the age of the victim except voter Identity Card and PM report, which document would taken to be the reliable document for assessing the applicable multiplier of a compensation case”**.

Learned Advocate for the respondent cited a decision reported in **2008 ACJ 386, Jenali & Ors Vs. National Insurance Company Limited**, wherein the Division Bench of this court has held that the voter identity card is being

prepared in due discharge of the official duty of senior officers thus the voter identity card is admissible in evidence in terms of section 35 of the Evidence Act.

He also cited a decision of Madras High Court passed in the case of **Divisional Manager Vs. K. Veeralakshmi** wherein in calculating just and proper compensation in a Motor Accident Claim Case, the Hon'ble Madras High Court did not rely upon the age mentioned in the post mortem report.

Finally the Learned Advocate for the respondent cited a decision of the Division Bench of this Hon'ble Court passed in **Paritosh Saha and others Vs. Oriental Insurance Company Limited**. Wherein the Division Bench of this court has decided the same question raised before this court here and has held that the voter identity card is an official document which can only be ascertained to be true though a different age was mentioned in the post mortem report.

Heard the Learned Advocate perused the citations advanced by the Learned Advocate for the respondent it is true that the post mortem was conducted by an experienced Autopsy surgeon who right down the age of the deceased only on the basis of his experience. It is also admitted that no ossification test to ascertain the actual age of the deceased was conducted by the Autopsy Surgeon at the time of post mortem

over the dead body of the deceased. Moreover, the victim of road traffic accident case usually appeared in the hospital not in a normal condition. At that time the experienced eye of a doctor can be misguided thus it is not scientific. On the other hand the voter identity card of a person was prepared by the various officers of the Election Commission of India in a set rules. They usually recorded the self assessment age of a person at the time of preparation of the voter identity card. There is a very few chance of manipulation of the age as at the time of preparation of voter identity card. There would have not personal gain of the person applying the voter identity card by suppressing his actual age.

Considering the entire facts and circumstances and considering the ratio of the judgment passed by the Hon'ble Apex Court as well as this court I am of a view that in absence of any other reliable document regarding proof of age, the age mentioned in the voter identity card should be treated as more reliable than the post mortem report. The multiplier of a compensation case should be assessed according to the age of the deceased written in the voter identity card.

In this case according to the post mortem report the age of the deceased was 54 at the time of accident but according to the voter identity card his age was 33 on 01.01.1995, the date

of accident is on 4th February 2007 thus according to the voter identity card the age of the deceased was 45 years at the day of accident. Thus considering the age of the deceased in voter identity card the deceased come under the age group of 45 to 50. According to the judgment of Hon'ble Supreme Court made in **Sarla Verma & Ors Vs. Delhi Transport Corporation and Another**. Reported in **2009 ACJ 1298** the multiplier to be adopted for determining the compensation should be 13.

Just and proper compensation of this case is assessed hereunder:

Monthly income (notionally) Rs. 3000/-

Yearly Income (3000 X 12) Rs. 36000/-

Deduction (1/4th of Yearly Income) Rs. 9000/-

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Rs.27,000/-

Future Prospects (25% over the Income according to '**Pranay Sethi**')
+

+

Rs. 6,750/-

Rs. 33,750/-

Multiplier (13 according to '**Sarala Verma**')
(33,750 X 13)

= Rs. 4, 38,750/-

General Damages

Rs. 70,000/-

Total

Rs. 5, 08,750/-

The appellant insurance company is directed to pay compensation to the claimants through the office of the Tribunal along with 6% interest per annum from the date of filing of the claim application vide separate equal account payee cheques in the name of the each claimants within 50 days from the date of passing the award failing which the award shall carry further 9% interest per annum till its actual realisation.

The respondent No. 1 is at liberty to withdraw the cheques in favour of the minor claimants and shall deposit the same in the post office or any Nationalised Bank and she is at liberty to withdraw the interest accrued therein for the welfare of the minor child till they attained majority.

The instant FMA is disposed of.

The award passed by the Learned Tribunal is hereby modified as mentioned above.

Appellant Insurance Company is at liberty to withdraw the amount which was deposited by virtue of the order of this court from the concerned bank along with accrued interest if any.

The pending CAN applications if any are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)