

25.09.2023
Ct. no.654
Sl. No.176
Sn/ab

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**F.M.A. 405 of 2017
(CAN 3 of 2023)**

**United India Insurance Co.Ltd.
Vs.
Smt. Gita Gorai & Ors.**

Mr. Parimal Kumar Pahari
... For the appellant-insurance Co.

Mr. Jayanta Kumar Mondal
... For the respondents-claimants

This appeal is preferred against the judgment and award dated 20th May, 2016 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 2nd Court, Durgapur, Paschim Bardhaman in M.A.C. Case no. 61 of 2013 granting compensation of Rs.40,09,000/- 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 8th April, 2013, at about 7-30 p.m. while the victim was proceeding towards Ukhra to join his duties at ECL by motor cycle and when he reached between Kalipur and Madhaiganj the offending vehicle bearing registration no.WB-19B/8143 (tanker) dashed the victim from behind in a rash and negligent manner, as a result of which the victim sustained severe multiple injuries and was immediately taken to SD Hospital, Durgpur where he was declared dead by the attending doctor. On account of sudden

demise of the victim, the claimants being the widow, son and daughter filed application for compensation of Rs.38,22,544/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibit 1** to **12/1** respectively.

Appellant-insurance company did not adduce any evidence.

By order dated 4th September, 2023, service of notice of appeal upon respondent no. 4, owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.40,09,000/- together with interest in favour of claimant nos. 1 & 3 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. Parimal Kumar Pahari, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in granting Rs.1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss compassion

for suffering mental pain and agony and Rs.25,000/- towards future funeral expenses which should be restricted to 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) 16 SCC 680***. He further submits that the rate of interest on compensation needs to be scaled down from 8% per annum in view of the prevailing banking rate of interest. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal.

Mr. Jayanta Kumar Mondal, learned advocate for the respondent nos. 1 to 3-claimants leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in granting compensation of Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of compassion for suffering pain and agony and Rs. 25,000/- towards future funeral expenses and *secondly*, whether the rate of interest on compensation should be scaled down from 8% per annum granted by learned Tribunal.

With regard to the first issue relating to grant of compensation under general damages, it is found that the learned Tribunal has granted Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of

compassion for suffering pain and agony and Rs.25,000/- towards future funeral expenses. However, following the observations made by the Hon’ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional head of loss of estate, loss of consortium and funeral expenses of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. Since three years have already elapsed, there shall be escalation of 10% on the amount under general damages.

With regard to the second issue relating to interest on compensation, it is found that the learned Tribunal has granted interest @ 8% per annum on the compensation amount. However, bearing in mind the prevailing banking rate of interest, the compensation amount shall carry interest @ 6% per annum.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.43,000/-
Annual income (Rs.43,000/- x 12)	Rs.5,16,000/-
Less: 1/3 rd towards personal and living expenses	Rs.1,72,000/-
	Rs.3,44,000/-
Multiplier 11 (Rs.3,44,000/- x 11)	Rs.37,84,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 10% escalation on general damages	Rs.7,000/-
Total compensation	Rs.38,61,000/-

Thus, the claimant is entitled to compensation of Rs. 38,61,000/- together with interest @ 6% per annum from the date of filing of claim application till payment.

It is found that the appellant-insurance company has deposited a sum of Rs. 51,54,410/- *vide* OD Challan No. 2718 dated 4th January, 2017 and an amount of Rs.25,000/- towards statutory deposit *vide* OD Challan No. 1547 dated 8th September, 2016. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

Learned Registrar General, High Court, Calcutta shall release the aforesaid compensation amount and the interest as indicated herein above, in favour of the respondent nos. 1 and 3, after making payment of Rs. 44,000/- in favour of the respondent no. 1, widow of the deceased towards spousal consortium, in proportions that the respondent no. 1 shall receive 60% and respondent no. 3 shall receive 40% of the compensation amount respectively, upon satisfaction of their identity.

Upon satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the Insurance Company.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award of the learned Tribunal 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.)