07.07.2023
Ct. no.654
Item no.13
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 141 of 2021

Kalpana Murari
Vs.
United India Insurance Co. Ltd. Ors.

Ms. Sima Ghosh
…for the appellants-claimants

Mr. Rajesh Singh
..for the respondent no.1-insurance Co.

This appeal is preferred against the judgment and award dated January 15, 2020 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd Court, Berhampore, Murshidabad, in MV Case No. 289 of 2016 granting compensation of Rs.4,62,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act,1988.

The brief fact of the case is that on 10th May, 2016, while the victim was going to his workplace at Jibanti and when he reached near Berhampore Bus Stand, at that time the offending vehicle bearing registration no. WB-57-7145 (truck) in a rash and negligent manner dashed the victim on NH-34 resulting in death of the victim on the spot. On account of sudden demise of the deceased, the claimant being the mother of the deceased filed application for compensation of Rs. 9,50,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined herself and produced documents, which have been marked as **Exhibits 1** to **3** respectively.

The respondent no.1-insurance Company did not adduce any evidence.

By order dated 13th June, 2023, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and evidence adduced by the claimant, the learned Tribunal granted compensation of Rs.4,62,000/- together with interest in favour of the claimant.

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

Ms. Sima Ghosh, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the income of the victim to the tune of Rs.5,000/- per month, whereas it ought to have considered the income of the victim at Rs.9,500/- per month by working as '*skilled worker*'. She further submits that the claimant is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect. Ms. Ghosh, in her usual fairness, submits that the multiplier should be 17 instead of 18. In the light of her aforesaid submissions, she prays for enhancement of the compensation amount.

In reply to her aforesaid submissions, Mr. Rajesh Singh, learned advocate for the respondent no.1-insurance company submits that there are no supportive evidence of the income of the deceased of Rs. 9,500/- per month and therefore the learned Tribunal rightly assessed the income of Rs.3,000/- per month. He further submits that since at the time of accident the victim was a bachelor, hence as per settled proposition of law, deduction towards personal and living expenses of the deceased should be 1/2 instead of 1/3rd.

Having heard the learned advocates for the respective parties, the following issues that have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the deceased. *Secondly,* whether the claimant is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect and *lastly,* whether the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/2.

With regard to the first issue relating to determination of income of the deceased, it is found that the learned Tribunal determined the income of the deceased at Rs.3,000/- per month. The claimant in the claim application as well as in her evidence have claimed the income of her deceased son at Rs.9,500/- per month working as *"Wood Mistry"*. Such assertion of the income of victim apparently appears to be exorbitant. In the case of ***Sri Ramachandrappa versus The Manager, Royal Sunadram Allaince Insurance Company Limited*** reported in ***(2011) 13 SCC 236*** the Hon'ble Supreme Court observed as follows.

> *"14. . . . We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. . . ."*

Bearing in mind the aforesaid observation and taking into consideration the economic factors and the cost of essential commodities prevailing in the year 2016, I am of the opinion that an income of Rs.5,000/- per month of the deceased should be considered for determination of compensation.

So far as future prospect is concerned, at the time of accident admittedly the victim was 26 years of age and was self-employed, thus following the observation of Hon'ble Supreme Court in ***National Insurance Co. Ltd. versus Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***, the claimant is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

With regard to the last issue relating to deduction towards personal and living expenses, it is found that the learned Tribunal has deducted 1/3rd. Undisputedly, the victim at the time of accident was a bachelor. As per settled proposition of law laid down by the Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298***, the deduction towards personal and living expenses of the deceased in the present case should be 1/2.

Since at the time of accident the victim was 26 years of old hence following observations of *Sarla Verma (supra)*, the multiplier should be 17 as has been rightly submitted by the learned advocate for the appellant-claimant.

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.5,000/-
Annual income	Rs.60,000/-

(Rs.5,000/- x 12)	
Add: 40% of annual income towards future prospect	Rs.24,000/-
	Rs.84,000/-
Less: 1/2 deduction towards personal and living expenses	Rs.42,000/-
	Rs.42,000/-
Multiplier 17 (Rs.42,000/- x 17)	Rs.7,14,000/-
Add: General damages Loss of estate: Rs.15,000/- Funeral expenses: Rs.15,000/-	Rs.30,000/-
Total	Rs.7,44,000/-

Thus, the appellant-claimant is entitled to Rs.7,44,000/- together with interest @ 6% per annum from the date of filing of the claim application till payment. It is informed that the claimant has received Rs.4,62,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimant is entitled the balance amount of compensation Rs.2,82,200/- together with interest @ 6% from the date of filing of the application till payment.

The respondent no. 1-insurance company is directed to deposit the aforesaid balance amount of compensation together with interest as indicated above, by way of a cheque, before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The appellant-claimant is directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation along with interest indicated hereinabove, the learned Registrar General, High Court, Calcutta shall release the compensation amount in favour of the claimant upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

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.)