

28.08.2023
Ct. no.654
Item no.51
sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)**

**FMA 899 of 2018
(CAN 1/2017) (Old CAN 12051/2017)**

**Khuku Rani Samanta @ Khuku Samanta & Ors.
Vs.
Oriental Insurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy

...for the appellants-claimants

Ms. Gopa Das Mukherjee

..for the respondents-insurance co.

This appeal is treated under the heading
“*Hearing*” in the day’s list.

This appeal is preferred against the judgment and award dated 17th December, 2016 passed by the learned Judge, Motor Accident Claims Tribunals, Purba Medinipur in MAC case no.65 of 2015 granting compensation of Rs.5,39,900/- together with interest in favour of the appellant nos. 1 to 3 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 24th September, 2011 in between 3-00 a.m. and 4-00 a.m. while the victim was travelling by the offending vehicle bearing registration no. WB-29/9649(Truck) from Tata to Ranchi as a helper along NH-33 the said vehicle met with an accident near Ramnagar Canal Bridge due to rash and negligent driving of the said vehicle by the driver, as a result of which the victim died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor

daughters and father of the victim filed application for compensation of Rs.14,00,000/- 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 **Exhibits 1 to 8** respectively.

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

Since the respondent no.2, owner of the offending vehicle, did not contest the claim application and the case has been disposed of *ex-parte* against him, hence service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the appellants-claimants, the learned Tribunal granted compensation of Rs. 5,39,900/- together with interest in favour of the appellant nos.1 to 3 (claimants) under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the appellants-claimants have preferred the present appeal.

With the consent of the parties, preparation of informal paper books is dispensed with.

Mr. Amit Ranjan Roy, learned advocate for the appellants-claimants submits that the learned Tribunal failed to grant future prospect of 40% of the annual income of the victim and general damages under the conventional heads of Rs.70,000/- . In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Ms. Gopa Das Mukherjee, learned advocate for the respondent no.1-insurance company submits that the learned Tribunal after considering the facts and circumstances of this case has rightly granted compensation of Rs.5,39,900/-, which does not call for interference. She submits that the order of the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect and *secondly*, whether the claimants are entitled to general damages under the conventional heads of Rs.70,000/-.

With regard to the first issue, it is found that the victim at the time of accident was above 25 years of age and was presumably employed. Following the observation of the Hon'ble Supreme Court in ***National Insurance Company Limited versus***

Pranay Sethi and Others reported in **2017 ACJ 2700**, the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

So far as general damages are concerned, it is found that the learned Tribunal has granted Rs.9,500/- under the conventional heads. However, in view of the decision of *Pranay Sethi (supra)* the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

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.4,000/-
Annual income (Rs. 4000/- x 12)	Rs.48,000/-
Add: 40% of the annual income towards future prospect	Rs.19,200/-
	Rs.67,200/-
Less: 1/3 rd towards personal and living expenses	Rs.22,400/-
	Rs.44,800/-
Multiplier 17 (Rs.44,800/- x 17)	Rs.7,61,600/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total	Rs.8,31,600/-

Thus, the total compensation comes to Rs.8,31,600/-.

It is informed that the claimant has already received an amount of Rs. 5,39,900/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 2,91,700/- together with interest @ 6% per annum from the date of filing of claim application (21.01.2015) till payment.

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

Upon deposit of the balance amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid balance amount of compensation and interest in favour of the appellant-claimant nos. 1 to 3 in equal proportion after making payment of Rs.40,000/- to the appellant no.1, widow of the deceased towards spousal consortium upon satisfaction of their identity.

The appellant no.1, being the mother and natural guardian of appellant nos. 2 & 3 shall receive the share of the said minors on their behalf and keep the same in a fixed deposit scheme of any nationalised bank or post office until attainment of majority of the said minors.

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.

Let a copy of this order along with the Lower Court Records be sent to the learned Court below for information in accordance with the rules.

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

(Bivas Pattanayak, J.)