16.10.2023
Ct. no.654
Sl. Nos.165-166
sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 359 of 2019
CAN 1 of 2019 (old CAN 827 of 2019)

The National Insurance Co. Ltd.
Vs
Durga Mudi & Ors.
With

COT 71 of 2019

Durga Mudi & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul
Ms. Jaita Ghosh
..for the appellant-Insurance Co.

Mr. Jayanta Banerjee
Mr. Sandip Bandhopadhyay
Mr. Argha Bhattacharjee
..for the respondents-claimants

This appeal is preferred against the judgement and award dated 31st July, 2018 passed by learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Paschim Medinipur in M.A.C. Case No. 407 of 2014 granting compensation of Rs.44,32,573/- 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 26th March, 2014 in between 11-30 a.m to 12-00 noon while the victim was proceeding towards Khatra from Sahebbar riding his bi-cycle for attending his job as a teacher in the school and when he reached near Mez

Harigera Poultry Farm at that time the offending vehicle bearing registration no.WB-34H/1818 (Tata Indica) coming from Sahebbar in a rash and negligent manner dashed the victim from behind, as a result of which he fell down on the road and sustained grievous injuries. Immediately, the victim was taken to Khatra S.D. Hospital where he was declared brought dead by the attending doctor. On account of sudden demise of the victim, the claimants being the widow and two sons of the deceased filed application for compensation of Rs.38,00,644/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined claimant no.1 and two other witnesses and produced documents, which have been marked as **Exhibit 1** to **14/A** (series) respectively**.**

The appellant-insurance company did not adduce any evidence.

Since the respondent no.4, owner of the offending vehicle, did not contest the claim application and the case was 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 claimants, the learned Tribunal granted compensation of

Rs.44,32,573/- together with interest 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 preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred a cross objection being COT 71 of 2019.

Both the appeal as well as the cross objection are taken up together for consideration and disposal.

Mr. Sanjoy Paul, learned advocate for the appellant-insurance company submits that there is delay of more than one month in lodging the FIR which raises doubt in the claim case. He further submits that the learned Tribunal erred in granting future prospect of Rs.7,28,429/- whereas it ought to have granted 15% of the annual income of the victim towards future prospect. He fairly submits that the general damages should be Rs.70,000/- instead of Rs.62,000/-.granted by the learned Tribunal. In the light of his aforesaid submissions, he prays for setting aside the impugned judgment and award and/or modification of the same.

Mr. Jayanta Banerjee, learned advocate for the respondent nos. 1, 2 & 3 (claimants) submits that the delay in lodging the FIR has been duly explained and as such delay *per se* would not make claim of the claimants doubtful. He also submits that the general damages should be Rs.70,000/- instead of Rs.62,000/-. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly,* whether the delay in lodging the FIR makes claim case doubtful; *secondly*, whether the claimants are entitled to future prospect of 15% of the annual income of the victim instead of Rs.7,28,429/- and *lastly,* whether the claimants are entitled to general damages of Rs.70,000/- instead of Rs.62,000/- granted by the learned Tribunal.

With regard to the first issue relating to delay in lodging the FIR, it is found that the FIR has been lodged on 28th April, 2014, which is after more than one month of the occurrence on 26th March, 2014. The delay in lodging the FIR has been duly explained by the widow of the deceased (FIR maker) that due to sudden demise of her husband and for reasons for mental agony, there has been delay in lodging of the FIR. Further there is no evidence of fabrication or concoction or engineering of FIR. The Hon'ble Supreme Court observed in ***Ravi versus***

Badrinarayan and Others reported in ***2011 (1) T.A.C. 867 (S.C.)*** as follows:-

> "20. *It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kind to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground."*

Bearing in mind the aforesaid observation of the Hon'ble Supreme Court, as in the present case at hand, there is no evidence of fabrication or concoction or engineering to the FIR, hence, the delay in lodging FIR *per se* would not make the claim case doubtful. In view of the above, the argument advanced on behalf of the appellant-insurance company fall short of merit.

With regard to the second issue relating to entitlement of future prospect, it is found that the learned Tribunal has granted Rs.7,28,429/- towards future prospect. Admittedly, at the time of accident, the victim was 52 years of age and he was an assistant teacher of Matgoda High School, Post Office Matgoda, District Bankura. Following the observations of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, the claimants are entitled to an amount equivalent to 15% of the annual income of the victim towards future prospect.

So far as the general damages are concerned, it is found that the learned Tribunal has granted Rs.62,000/- under the general damages. However, following the observations in *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.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid factors, calculation of compensation is made hereunder.

<u>Calculation of Compensation</u>

Monthly income	Rs.41,388/-
Annual income (Rs.41,388/- x 12)	Rs.4,96,656/-
Add: 15% of the annual income towards future prospect	Rs.74,498/-
	Rs.5,71,154/-
Less: 1/3rd deduction towards personal and living expenses	Rs.1,90,385/-
	Rs.3,80,769/-
Multiplier 11 (Rs.3,80,769/- x 11)	Rs.41,88,459/-
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.42,58,459/-

Thus, the respondents -claimants are entitled to compensation of Rs.42,58,459/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

It is found that the insurance company has already deposited an amount of Rs.56,20,565/- in terms of the order of this Court vide O.D. challan no. 83 dated 11th April, 2019 and an amount of Rs.25,000/- as statutory deposit vide O.D. challan no. 2817 dated 12th February, 2019 before the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

The respondents-claimants are directed to deposit *ad valorem* court fees on the compensation amount assessed, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the aforesaid compensation amount and interest in favour of the respondents-claimants, after making payment of Rs.40,000/- in favour of the respondent no.1, widow of the deceased, towards spousal consortium and in the proportion that respondent no.1 shall receive 40% of the compensation amount and the respondent nos. 2 & 3 shall receive 30% each upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the insurance company.

With the above observations, the appeal and the cross objection stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)