IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

13.02.2023
SL No.5 & 6
Court No. 654
Ali

F.M.A. 1885 of 2018
IA No.: CAN/2/2018 (Old No.:CAN/1576/2018)
CAN/3/2018 (Old No.:CAN/8847/2018)
CAN/4/2020 (Old No.:CAN/491/2020)
CAN/5/2022

The National Insurance Co. Ltd.
Vs.
Basanti Das & Ors.
With
COT 44 of 2018
Basanti Das & Ors.
Vs.
The National Insurance Co. Ltd.

Mr Deb Narayan Roy
....for the appellant -Insurance Co.

Mr. Amit Ranjan Roy
.....for the respondents-claimants.

This appeal is preferred against the judgement and award dated 22 June 2017 passed by Additional District Judge cum Judge, Motor Accident Claims Tribunal, 7th Court, Paschim Medinipur in M.A.C Case no. 99 of 2014 granting compensation of Rs. 7,11,500/- in favour of the claimants together with interest under Section 166 of the Motor Vehicles Act, 1988.

During the pendency of this appeal respondent no. 4, Tuki Das, mother of the deceased, died and daughters and sons of the said deceased respondent have been substituted in her place as respondent no.4(a) to 4(h) respectively.

The brief fact of the case is that on 23 December 2013 at about 8 AM while the victim along with others were proceeding towards Chhatraganj through Chandrakona Palashchapri Pitch Road on foot, at that time the offending vehicle bearing registration no. WB-33B/7432 (pick up van) in a rash and negligent manner dashed the victim and others near Chhatraganj as a result of which the victim and others sustained injuries. Immediately the injured persons including the victim was taken to Chandrakona Block Primary Health Centre, where the attending doctor declared the victim dead. On account of sudden demise of the victim, the claimants being the widow, sons and mother of the deceased filed application for compensation of Rs.7,00,000/-under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined as many as three witnesses and produced documents which have been marked as **Exhibits 1 to 11** respectively.

The appellant-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs. 7,11,500/- in favour of the claimants 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 insurance company has preferred the present appeal.

The respondents-claimants have also filed a cross-objection against the award passed by the learned tribunal.

Both the appeal and the cross-objection is taken up together for consideration and disposal.

Mr Deb Narayan Roy, learned advocate for appellant-insurance company submits that the case made out by the claimants in their claim application is doubtful inasmuch as there is discrepancy in the date of death of the victim appearing in the death certificate and the post-mortem report. He further submits that the learned tribunal erred in determining the income of the deceased on the basis of guesswork. Furthermore, he submits that the claimants have not produced any documents in support of income of the deceased and therefore considering the prevailing price index at the time of accident the income should be assessed. In light of his aforesaid submissions, he prays for modification of the award.

In reply to the contentions raised on behalf of the appellant insurance company, Mr Amit Ranjan Roy, learned advocate for respondents-claimants submits that though in the death certificate the date of death of the deceased has been recorded as 5 February 2014 however in all of the other documents produced on behalf of the claimants the date of death of the deceased has been mentioned as 23 December 2013 which clearly indicates of mistake in recording the date of death of the deceased in the death certificate.

He further submits that the income of the deceased determined by the learned tribunal of Rs. 300/- per day should be affirmed keeping in mind the profession of the deceased-victim at the time of accident. Furthermore, he submits that the claimants are also entitled to future prospect equalling to 25% of the annual income of the deceased since at the time of accident the deceased was self-employed and was 46 years of age. In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In spite of due service of notice of appeal respondent no.5-owner of the offending vehicle is unrepresented.

Having heard the learned advocates for the respective parties, it is found that the insurance company in the present appeal has raised twofold grounds, *firstly,* that the claim is doubtful since there is discrepancy in the date of death of the deceased appearing in the death certificate *vis-a-vis* post-mortem report and *secondly*, that the learned tribunal erred in determining the income of the deceased-victim.

With regard to the discrepancy in the date of death of the deceased victim, it is found in the death certificate **(Exhibit 7)** the date of death is 5 February 2014 whereas the post-mortem report **(Exhibit 11)** shows death on 23 December 2013. Thus, there is variance in the date of death of the deceased victim noted in the aforementioned two documents produced at the instance of the claimants. In order to appreciate the ground raised by the insurance company regarding such discrepancy and its effect on the claim made by the claimants, it would be apposite to refer to the other documents placed by the claimants which has relevance so far as the date of death of the deceased is concerned namely the first information report and the chargesheet. From the first information report lodged on subsequent date of occurrence, it manifest that the victim met with an accident on 23 December 2013 and succumbed to his injuries on the said date itself. Further from the chargesheet it is revealed that for causing enquiry into such unnatural death of the deceased a UD Case being 75 of 2013 was initiated on 23.12.2013. It is further revealed that on preparation of *Surathal* Report the dead body of the deceased-victim was sent to Ghatal S.D. Hospital Morgue for post-mortem examination for ascertaining the cause of death of the deceased-victim. Thus, the date of death appearing from the first information report and the chargesheet is in consonance with the post-mortem report. Therefore, it goes without saying that the date of death noted in the death certificate is improperly recorded. In view of the above discussion, the argument advanced on behalf of insurance company in this regard falls short of merit.

With regard to the second issue relating to determination of income of the deceased victim, it is found that the learned tribunal taking recourse to guesswork determined the income of the deceased at Rs.300/- per day and took number of working days of 270 days for determining the annual income of the deceased. The claimants have asserted that the income of the deceased was Rs. 9000/- per month but that appears to be exorbitant.

In the case of ***Ramchandrappa versus Manager, Royal Sundram Allaince 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 guesswork, which*

> *may include the ground realities prevailing at the relevant point of time…………”*

The evidence of PW1, widow of the deceased that her deceased husband was a mason as been corroborated by PW2 and PW3, both of whom are local people and deposed that the deceased was an efficient mason. Bearing in mind the aforesaid observation of the Hon'ble Court, since it is found from the evidence that the deceased was an efficient mason, resorting to some guesswork in my estimation in the facts and circumstances of the case an income of Rs.250/- per day may be taken into account and the number of working days as considered by the learned tribunal of 270 days does not require interference. Considering the above factors and bearing in mind the facts and circumstances of the present case, the annual income of the deceased-victim is calculated to Rs. 67,500/-(Rs.250/-X 270days).

So far as the entitlement of future prospect is concerned as raised in cross-objection, since at the time of accident the victim was 46 years of age and was self-employed, following the observation of 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 additional amount equalling to

25% of the annual income of the deceased-victim towards future prospect.

As three years have already lapsed, hence the claimants are also entitled to escalation of 10% on the amount towards general damages.

The other findings and factors of the learned tribunal has not been challenged in the present appeal.

The calculation of compensation is made hereunder.

Calculation of compensation

Annual Income..............................Rs. 67,500/-
Add:25% of total Income
towards future prospect....................Rs.16,875/-
Annual loss of Income......... ....Rs.84,375/-
Less: Deduction 1/3rd of the
Annual Income towards
personal and living expenses..............Rs.28,125/-
Rs.56,250/-
Adopting multiplier 13
(Rs.56,250/- X 13).........................Rs.7,31,250/-
Add: General Damages......................Rs.70,000/-
Loss of estate....Rs.15,000/-
Loss of Consortium....Rs.40,000/-
Funeral Expenses.......Rs.15,000/-
Add: 10% increase on general damages...Rs.7,000/-
Total Compensation........................Rs.8,08,250/-

Thus, the claimants are entitled to the compensation amount of Rs 8,08,250/-together with interest at 6% per annum from the date of filing of the claim application (i.e. 28.02.2014) till deposit. It is informed that the insurance company as deposited statutory amount of Rs.25,000/- vide OD challan no.1251 dated 17.8.2017 and an amount of Rs.8,31,176/- in terms of order of this Court dated

10 May 2018 vide OD challan no. 469 dated 6.6.2018. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire compensation amount.

The claimants are also entitled to balance amount of compensation of Rs.96,750/-together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 28.02.2014) till deposit.

Appellant-insurance company is directed to deposit the balance amount of compensation as aforesaid together with interest by way of cheque before the learned Registrar General, High Court, Calcutta, within a period of six weeks from date.

Mr Roy, learned advocate for respondents submits that no amount is required to be granted in favour of substituted respondents nos. 4(a) to 4 (h) and the entire amount of compensation be granted in favour of respondent nos.1, 2 and 3 namely the widow and sons of the deceased.

Respondent nos.1, 2 and 3-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

Accordingly, in view of such submissions, upon deposit of the balance amount together with interest, learned Registrar General shall release compensation amount in favour of respondent no.1, 2 & 3, after making payment of Rs.44,000/-

respondent no.1-widow of the deceased towards spousal consortium and rest amount shall be disbursed in equal shares in favour respondent nos. 1, 2 and 3, on satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observation, the appeal and the cross-objection stands disposed of. The impugned judgement and award of the learned tribunal is modified to the above extent. No order as to cost.

All connected applications, if any, stands disposed of.

Interim orders if any, stands vacated.

Let a copy of this order alongwith the lower court records be forwarded to the learned tribunal for information.

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

(Bivas Pattanayak, J.)