IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 84 of 2011

With

CAN 1 of 2011 (Old No. CAN 135 of 2011)

National Insurance Co. Ltd.
Versus
Melo Kisku & Ors.

For the appellant : Mr. Afroze Alam, Adv.

For the Respondent : Mr. Saidur Rahaman, Adv.

Heard on : 06.09.2023

Judgment on : 29.09.2023

Ajay Kumar Gupta, J:

1. The instant appeal arises out of a judgment and award dated 24th September, 2010 passed by Learned Judge, Motor Accident Claims Tribunal- cum -Additional Sessions Judge, Fast Track, 1st Court, Malda in M.A.C. Case No. 61 of 2010, thereby the Ld. Tribunal awarded a compensation to the tune of Rs. 3,50,000/- on contest against the Appellant/National Insurance Company Limited and ex parte against owner of the offending vehicle. National Insurance Company has been directed to pay the said amount within two months from the date of judgment failing which the amount will carry interest at the rate of 6% per annum till the date of realisation under Section 163A of the Motor Vehicles Act,1988.

2. Sans otiose details, the fact of the instant case is that on 02.02.2010 the victim Durga Hembram was standing by the side of the road of Pakua – Nalagola, at that point of time the offending vehicle bearing No. WB 65/2442 was coming from Pakua side towards Nalagola side with excessive speed and in negligent manner and suddenly dashed the victim Durga Hembram as a result he sustained injuries. He was removed to Nadipakua Hospital and thereafter he was further referred to Malda Sadar Hospital, where he succumbed to his injuries. The claimants have filed this case under Section 163 (A) of the Motor Vehicles Act against the Insurance Company and the owner of the offending vehicle.

3. The National Insurance Company has contested the case by filing written statement denying all material facts and allegations as made out in the claim application. Whereas, owner of the offending vehicle did not contest the case from initial stage. The claimant herself examined as P.W. 1 and P.W. 2 is an eye witness. P.W. 1 has proved that the offending vehicle was involved in the said accident and accident took place when offending vehicle knocked down the victim on the road when he was standing. The contention of the P.W. 1 has been supported by P.W. 2. He stated that at the time of accident, he was sitting at a nearby tea stall. He saw the accident. After the accident, he lodged an FIR at Bamongola P.S. The claimants have produced the copy of FIR, seizure lists, RC book, charge sheet, post mortem report and those documents are marked as Exhibits 1 to 7. The learned Tribunal after assessing and scanning the evidence of the P.Ws. 1 and 2 observed that the offending vehicle bearing No. WB 65/2442 was involved in the accident and due to rash and negligent driving of the driver of the offending vehicle accident was occurred and, in such accident, the victim Durga Hembram was expired due to injuries suffered by him.

4. Learned counsel appearing on behalf of the Insurance Company submitted that the learned Tribunal has wrongly assessed the income of the victim as Rs. 3000/- per month though no documents were brought on record before the learned Tribunal to substantiate his income was Rs. 3000/- per month and the learned Tribunal on personal guesswork considered the income of the victim as Rs. 3000/- per month and finally awarded a compensation to the tune of Rs. 3,50,000/- which is required to be reconsidered by this Appellate Court after setting aside of the judgement and award under challenged in this appeal. Income of the victim is not proved by the claimants/respondents. If claimants fail to prove income of the victim then the actual notional income ought to be Rs. 15,000/- in view of the Schedule II of the Motor Vehicles Act, 1988. But the learned Tribunal had considered his notional income as Rs. 3000/- which is not at all permissible in view of the structural formula, applied in a case filed under Section 163(A) of the Motor Vehicles Act.

5. On the other hand, learned counsel appearing on behalf of the respondents/claimants submitted that there were five members in victim's family at the time of accident and the victim used to drive the power tiller on each date to the land of others. He used to earn more than Rs. 100 per day. So, his income was more than Rs. 3000/- per month. Furthermore, the ld. Tribunal has relied on a decision reported in **Laxmi Devi and**

Others v. Md. Tabbar and Anr[1], and finally held that the deceased had an annual income of Rs. 36,000/- per annum considering his income as Rs. 3000/- per month. Therefore, the Ld. Tribunal has rightly assessed the compensation to the tune of Rs. 3,50,000/-. However, the ld. Tribunal did not allow the interest from the date of filing of the claim application till realisation. The interest ought to be allowed from the date of filing of the claim application. He prayed for allowing interest from the date of filing till the date of realisation.

6. It is further submitted that in spite of allowing compensation by the Ld. Tribunal, the Insurance Company did not pay the awarded amount till date and filed this appeal with a frivolous ground that the notional income ought to be Rs. 15,000/- per annum. Though there is a settled principle of law that even an unskilled labour could have earned Rs. 100/- per day. Victim had maintained his entire family with such meagre income of Rs. 100/- per day is genuine and acceptable.

7. Having heard the submission of both sides and on perusal of the materials available on record, it is admitted facts that the offending vehicle was involved in the said accident and the victim died due to injuries suffered by Motor traffic accident. The Ld. Tribunal has considered the

[1] **2008 (2) T.A.C. 394 (SC)**

insurance policy marked as Exhibit A which shows the insurance policy was valid from 26.01.2010 to 25.01.2011 and the accident took place on 02.02.2010. Therefore, the offending vehicle was very much valid on the date of accident.

8. It is also admitted fact that the instant case has been filed by the claimants under Section 163 A of the Motor Vehicles Act, which requires not to prove the question of negligence or fault on the part of the offending vehicle or the victim. The compensation should be awarded on the basis of structural formula. For calculation of the compensation, the ld. Tribunal has taken the income of the victim as Rs. 3000/- per month as claimed by the claimants. Not only that the Ld. Tribunal also relied on the decision of the Supreme Court reported in **2008 (2) T.A.C. 394 (SC) (Laxmi Devi and Others v. Md. Tabbar and Anr),** this Court does not find any cogent reasons to discard the income of the victim as Rs.3,000/= because the claimants claimed income of the victim as Rs. 3000/- per month considering his income as Rs. 100/- per day as victim used to drive the power tiller on each day of the land of the others and he used to earn more than Rs. 100/- per day. Rs. 100/- per day is minimum income and even an unskilled labour can earn such amount per day. Furthermore, the Hon'ble Supreme Court also held in the aforesaid reported judgment that the notional income fixed in Schedule II of the Motor Vehicles Act as Rs.

15,000/- in the year 1994. In the present case, the accident took place on 02.02.2010 i.e., after lapse of more than 15 years and the Supreme Court has held that even an unskilled labour could earn Rs. 100/- per day. That apart, the Insurance Company did not prefer to examine any witness on its behalf and during cross-examination the Insurance Company failed to rebut the contention of the income of the victim. So, considering the entire facts and circumstances, this Court is fully satisfied that the Tribunal has rightly assessed the income of the victim as Rs. 3000/- per month and the same is reasonable and acceptable without any confusion. The Ld. Tribunal has already accepted age of the victim as 33 years old at the time of accident. In view of the evidence adduced by the P.W. 1 and selected multiplier as 17 for the age group of 30 to 35 years which is not disputed by the Insurance Company. So, in view of the above discussions, this Court does not find any cogent reasons to interfere with the findings of the Ld. Tribunal regarding the income of the victim as well as multiplier.

9. It is a case filed under Section 163A of the Motor Vehicles Act. So, question of proving negligence or fault on the part of driver of the offending vehicle is not require by the claimants. The questions now only involved here is that:

i. Whether the offending vehicle was duly covered by a valid insurance policy on the date of accident or not?

ii. Whether the claimants are entitled to get interest from the date of filing claim application or not?

The Ld. Tribunal has considered the insurance policy marked as Exhibit A which shows the insurance policy was valid from 26.01.2010 to 25.01.2011 and the accident took place on 02.02.2010. Therefore, the offending vehicle was very much valid on the date of accident. Accordingly, the Respondents/Claimants are entitled to get compensation from the Appellant/Insurance Company with interest from the date of filing appeal.

10. In the light of above discussion and findings, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Annual Income (Rs. 3000/- X 12)	Rs. 36,000/-
Less: deduction 1/3rd of the total Annual income (towards personal and living expenses)	Rs. 12,000/-
Total income after deduction	Rs. 24,000/-

Total loss of Dependency Rs. 24,000/- X 17 (Multiplier)	Rs. 4,08,000/-
Add: Loss of estate	Rs. 2,500/-
Add: Funereal Expenses	Rs. 2,000/-
Add: Loss of consortium	Rs. 5,000/-
Total compensation	Rs. 4,17,500/-

11. Thus, the respondents/claimants are entitled to get total compensation amount to tune of Rs. 4, 17,500/- which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 26.02.2010 till final payment as it was informed that no any compensation amount has been paid by the Insurance Company to the complainants till date.

12. The Appellant-Insurance Company is directed to deposit total compensation amount i.e. Rs. 4,17,500/= together with interest as indicated above by way of cheque before the office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

13. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellants /claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 24th September, 2010.

14. The impugned judgment and award of the learned Tribunal dated 24th September, 2010 is modified to the aforesaid extent only. No order as to costs. With above observations, the instant appeal stands disposed of.

15. Consequentially, application being **CAN 1 of 2011 (Old No. CAN 135 of 2011)** is also thus disposed of.

16. In view of the submission made by the learned advocate appearing on behalf of the Insurance Company, liberty is giving to the Insurance Company to withdraw the statutory amount, already deposited vide O.D. Ch. No. 2816 dated 04.01.2011 in the Office of the Registrar General, High Court, Calcutta along with accrued interest after payment of entire compensation amount to the respondents/claimants.

17. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

18. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

19. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)