27.07.2023
Ct. 654
D/L 3 & 4
ab/kb

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 511 of 2018
With
CAN 1 of 2017 (Old No. CAN 11399 of 2017)
CAN 2 of 2021
CAN 3 of 2022

Reliance General Insurance Co. Ltd.
-Vs-
Kalipada Mukherjee & Ors.
With

COT 29 of 2021

Kalipada Mukherjee & Ors.
-Vs-
Reliance General Insurance Co. Ltd. & Anr.

Mrs. Gopa Das Mukherjee
… for the appellant-Insurance Company

Mr. Krishanu Banik
… for the respondents -claimants

This appeal is preferred against the judgment and award dated 11th August, 2017 passed by the learned Additional District Judge, Bishnupur, Bankura in MAC Case No. 01 of 2014 granting compensation of Rs. 26,53,121/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Mr. Krishanu Banik, learned advocate for the respondents-claimants submits that the respondents-claimants have filed an application for making necessary correction in the name of the respondent no. 3 as well as for recording her attainment of majority being CAN 2 of 2021. He further submits that the name of the respondent no. 3 should be "*Miss Saheli Mukherjee*" instead of "*Miss Sefali Mukherjee*". During the pendency of the appeal, the respondent no. 3 has attained majority. He seeks for necessary correction in the cause title of the memorandum of appeal as well as cross objection in respect of the respondent no. 3 as aforesaid.

It is found from the aforesaid application and the document annexed thereto that the original name of the respondent no. 3 is "*Miss Saheli Mukherjee*" and her date of birth is 26th August, 1997. Accordingly, the name of respondent no. 3 be corrected in the cause tile of the memorandum of appeal as well as cross objection as "*Miss Saheli Mukherjee*" and her attainment of majority be also recorded in the memorandum of appeal.

Department concerned is directed to make necessary correction in the cause title of the memorandum of appeal as well as cross objection as aforesaid in respect of the respondent no. 3 and cross-appellant no.3.

CAN 2 of 2021 accordingly stands disposed of.

The brief fact of the case is that on 11th November, 2014 while the victim was returning from Bishnupur through main road to Sonamukhi at that time the offending vehicle bearing registration No. WB 41-B/4202 in a rash and negligent manner dashed the victim from behind, as a result of which she sustained multiple injuries and died on the spot. On account of sudden demise of the victim, the claimants being the husband, son and minor daughter filed application for compensation of Rs. 25,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined one witness namely claimant no. 1 and produced documents, which have been marked as **Exhibits 1** to **11** 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, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 26,53,121/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the insurance company has preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred a cross objection being COT 29 of 2021.

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

Mrs. Gopa Das Mukherjee, learned advocate for the appellant-insurance company submits that the claimants have failed to establish the fact of rash and negligent act on the part of the driver of the offending vehicle on the relevant date which is *sine qua non* in an application under Section 166 of the Motor Vehicles Act and, therefore, the claim of the claimants under Section 166 of the Act must fail for such reason. She further submits that since at the time of accident, the victim was 43 years of age, the multiplier would be 14 instead of 15 adopted by the learned Tribunal in view of the decision of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation reported in 2009(9) ACJ 1298.*** Moreover, the income of the deceased has not been proved since the authority which issued the salary certificate was not examined to verify the contents of the salary certificate. Further, though the claimants may be entitled to future prospect but it shall not carry interest since future prospect is with regard to probable income to be received in the future and thus there is no requirement to compensate the claimants by way of future interest for the loss that is to occur in the future. In the light of the aforesaid submissions, she prays for setting aside of the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Krishanu Banik, learned advocate for the respondent nos. 1 to 3-claimants submits that the insurance company has not taken any ground challenging the finding of the learned Tribunal with regard to rash and negligent act of the driver of the offending vehicle and as such, the insurance company is precluded from pressing such ground. However, even if such ground is to be considered, it should be decided on the material available before the Court and on the touchstone of preponderance of probabilities. He also concedes that the multiplier should be 14 instead of 15 adopted by the learned Tribunal. With regard to cross objection, he submits that the claimants are entitled to general damages of Rs. 70,000/- under the conventional heads and future prospect of an amount equivalent to 30% of the annual income of the deceased. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

Upon perusal of the memorandum of appeal, it is found that the insurance company has not taken any ground with regard to findings of the learned Tribunal regarding rash and negligent act on the part of the driver of the offending vehicle. Be that as it may, since such ground touches the root of the claim application, I find it proper to decide the aspect raised by the insurance company even though such ground has not been taken.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether there was rash and negligent act on the part of the driver of the offending vehcile; *secondly*, whether the multiplier should be 14 instead of 15 adopted by the learned Tribunal; *thirdly*, whether the learned Tribunal erred in determining the income of the deceased on the basis of salary certificate; *fourthly*, whether the claimants are entitled to general damages of Rs. 70,000/- under the conventional heads and *lastly*, whether the claimants are entitled to an amount equivalent to 30% of the annual income of the deceased towards future prospect.

With regard to the first issue relating to rash and negligent act on the part of the driver of the offending vehicle, it is found that the claimants have adduced the evidence of husband of the deceased (claimant no. 1) as P.W. 1 and also produced the charge sheet marked as

Exhibit-3. The learned Tribunal considering the oral and documentary evidence produced by the claimants and also that no contrary evidence has been produced challenging the negligence on the part of the driver of the offending vehicle held that the driver of the offending vehicle was guilty of rash and negligent act. It is not in quarrel that in an application under Section 166 of the Motor Vehicles Act, the claimants are required to establish the fact of rash and negligent act of the driver of the offending vehicle. Though the initial onus lies upon the claimants to prove the rash and negligent driving of the offending vehicle in an application under Section 166 of the Motor Vehicles Act but such onus shifts when the claimants by leading evidence discharges his initial onus. It is trite law that the approach and role of the Courts while examining the evidence in accident claim cases ought not to be find fault with non-examination of some best eyewitness, as may happen in a criminal trial, but instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The standard of proof beyond reasonable doubt as in the criminal trial cannot be applied in claim cases and that claimants are merely to establish their case on the touchstone of preponderance of probabilities. Bearing in mind the aforesaid, let me examine and analyse the materials on record to ascertain whether the driver of offending vehicle on the relevant date was guilty of rash and negligent driving. It is true that the claimants have not examined any eyewitness to the occurrence. P.W.1, husband of the deceased, is also not an eyewitness to the occurrence. Be that as it may, from the post mortem report **(Exhibit 6)**, it is found that in the accident the body of the deceased was pressed under the tyre of the offending vehicle. Although the Insurance Company has raised the specific plea that the offending truck was not at all negligent in the said accident but no evidence has been led from the side of the Insurance Company. Considering the manner in which the deceased sustained injuries and preponderance of probabilities, it clearly manifest that there was negligent act on the part of the driver of the offending vehicle. The negligence of the driver is further corroborated by filing of the charge sheet **(Exhibit-3)** by the Investigating Agency against the driver of the offending vehicle. Thus it goes without saying that the driver of the offending vehicle was guilty for rash and negligent driving of the offending vehicle.

With regard to the multiplier, it is found that learned Tribunal has adopted multiplier of 15. At the time of accident, admittedly the deceased was 43 years of age. Following the principles laid down in *Sarla Verma (supra)*, the multiplier should be 14 instead of 15 adopted by the learned Tribunal.

With regard to determination of income of the deceased, it is found that the learned Tribunal assessed the income of the deceased of Rs.21,876/- per month basing on the pay certificate **(Exhibit-10)**. Mrs. Mukherjee, Learned Advocate for the appellant-Insurance Company submits that such pay certificate is not acceptable since the same has not been proved by examining the issuing authority. The pay certificate is produced by the husband of the deceased P.W.-1 and such pay certificate has been tendered into evidence and marked Exhibit without objection. In the case at hand, even if for the sake of argument it is held that the pay certificate has been exhibited not on consent but on formal proof dispensed with, the insurance company was free to examine the witness on the question of veracity thereof or even lead evidence of rebuttal. The insurance company, in the present case, has not led any evidence challenging the veracity of the pay certificate produced at the instance of the appellant-claimant, therefore, having failed to take appropriate steps at the trial, the insurance company cannot contend before the Appellate Court that the contents of those documents were not proved. If such objection was raised at the trial, the appellant-claimant could even examine the authority who issued the certificate so that he could face the cross-examination of the insurance company. Thus, the argument advanced on behalf of the insurance company falls short of merit. For the aforesaid reason, the pay certificate is acceptable and can be taken into consideration. The learned Tribunal has considered the gross income as appearing in the pay certificate as the income of the deceased. However, it had not deducted the Professional Tax of Rs.130/-. The actual income of the deceased should be gross income less professional tax and thus it comes to Rs.21,746/- (Rs.21,876/- less Rs.130/-).

With regard to the issue of entitlement of general damages, it is found that the learned Tribunal has granted general damages of Rs.18,000/-. However, following the proposition 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.

So far as the future prospect is concerned since at the time of accident, the victim was 43 years of age and was a school teacher, following the proposition in *Pranay Sethi* (*supra),* the claimants are entitled to 30% of the annual income of the deceased towards future prospect.

Coming to the last issue raised regarding interest on future prospect. While dealing with the issue of future prospect, the Hon'ble Supreme Court in *Pranay*

Sethi (supra) at paragraph 55 of the decision has made following observation:

> *"55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and nonviolation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just*

compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

The Hon'ble Supreme Court in order to provide just compensation having uniformity of approach approved for standardization which in its ambit includes addition of future prospects on the present proven income. Accordingly, the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. Therefore, future prospect is not to be recorded as probable income which is to be received in the future. Bearing in mind the aforesaid argument advanced on the part of the Insurance Company in this regard fall short of merit.

The learned Tribunal has granted interest on compensation amount @ 16% per annum. However, keeping in mind the prevalent rate of banking interest, the interest on compensation amount should be @ 6% per annum.

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.21,746/-
Yearly Income (Rs. 21,746/- x 12)	Rs.2,60,952/-
Add: 30% of the annual income towards future prospect	Rs.78,286 /-
	Rs.3,39,238/-
Less: 1/3rd towards future prospect	Rs.1,13,079/-
	Rs.2,26,159/-
Multiplier 14 (Rs.2,26,159/- x 14)	Rs.31,66,226/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total compensation	Rs.32,36,226/-

Thus, the claimant is entitled to compensation of Rs. 32,36,226/- together with interest @ 6% per annum from the date of filing of claim application till payment.

It is found that the Appellant-Insurance Company had deposited a sum of Rs.3,48,827/- *vide* OD Challan No. 3237 dated 26th February, 2018 and Rs.40,23,430/- *vide* OD Challan No. 3238 dated 26th February, 2018 in terms of order of this Court dated 15th February, 2018 and also made statutory deposit of Rs.25,000/- *vide* OD Challan No. 1743 dated 25th October, 2017. All the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount.

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

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

Upon deposit of the balance amount, if any, and the interest as above, learned Registrar General High Court, Calcutta shall release the aforesaid amount of compensation and inerest in favour of the respondent nos. 1, 2 and 3 (claimants) in equal proportion after making payment of Rs.40,000/- in favour of the respondent no.1, husband of the deceased towards spousal consortium, upon satisfaction of their identity and payment of *ad valorem* Court fees, if not already paid.

If upon satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the Insurance Company.

With the aforesaid observations, the appeal as well as the Cross Objection stand disposed of. The impugned judgement and award 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 Tribunal 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**.)