

29.09.2023
Ct. 654
D/L 213
ab

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 60 of 2013

Maya Kapat

-Vs-

IFFCO Tokio General & Anr.

Mr. Subhankar Mandal

... for the appellant-claimant

Mr. Rajesh Singh

... for the respondent No. 1—insurance company

This appeal is preferred against the judgment and award dated 31st July, 2019 passed by the learned Additional District Judge-cum Judge, Motor Accident Claims Tribunal, Fast Track Court-III, Diamond Harbour, 24 Parganas (South) in MAC Case No. 171 of 2016 granting compensation of Rs. 19,14,246/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 18th January, 2016 at about 1.30 p.m. while the victim was standing by the side of the road to return home by car at that relevant point of time, the offending vehicle bearing registration No. WB-19F/5020 (Bus) in a rash and negligent manner dashed the victim resulting in bleeding injuries all over the body. Immediately, the

victim was taken to Diamond Harbour Sub-Divisional Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the claimant being the mother of the deceased filed application for compensation of Rs. 23,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined three witnesses and produced documents, which have been marked as **Exhibits 1 to 13** 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 was disposed of *ex parte* against him, 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 claimant, the learned Tribunal granted compensation of Rs. 19,14,246/- together with interest in favour of the claimant 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 claimant has preferred the present appeal.

Mr. Subhankar Mandal, learned advocate for the appellant-claimant submits that the learned Tribunal failed to grant an amount equivalent to 40% of the annual income of the victim towards future prospect. In the light of the aforesaid submission, he prays for modification of the impugned judgment and award of the learned Tribunal.

Mr. Rajesh Singh, learned advocate for the respondent no. 1-insurance company opposes such prayer.

Having heard the learned advocates for the respective parties, the only issue that has fallen for consideration, is whether the claimant is entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

It is not in dispute that at the time of accident, the victim was 27 years of age and he was running a business. Following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in ***2017 ACJ 2700***, the claimant is entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Yearly Income	Rs.2,21,677/-
Add: 40% of the annual income towards future prospect	Rs.88,671/-
Total income	Rs.3,10,348/-
Less: 1/2 nd towards personal and living expenses	Rs.1,55,174/-
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Multiplier 17 (Rs.1,55,174/- x 17)	Rs.26,37,958/-
Add: General damages Loss of estate: Rs.15,000/- Funeral Expenses: Rs.15,000/-	Rs.30,000/-
Total compensation	Rs.26,67,958/-

Thus, total amount of compensation comes to Rs. 26,67,958/-. It is informed that the claimant has already received the awarded compensation of Rs. 19,14,246/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimant is entitled to balance amount of compensation of Rs. 7,53,712/- together with interest @ 6% per annum from the date of filing of the claim application (26.05.2016) till payment.

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

The appellant-claimant is directed to deposit *ad valorem* Court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation and the interest as indicated hereinabove,

learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant-claimant, upon satisfaction of her identity and payment of *ad valorem* Court fees, if not already paid.

With the aforesaid observations, the appeal stands 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.

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

(**Bivas Pattanayak, J.**)