IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

24.01.2023
SL No.1
Court No. 654
Ali

F.M.A. 1620 of 2018
IA No: CAN/1/2019 (Old No:CAN/2316/2019)

Smt.Sabita Pandit & Ors.
-Versus-
Bajaj Allianz General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
...for the appellants-claimants.

Mr. Soumalya Ganguly
....for the respondent No. 1 Insurance Co.

This appeal is directed against the judgment and award dated 22 August, 2017 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, R.D Court, Paschim Medinipur in M.A.C. Case no. 419 of 2013 granting compensation of Rs. 4,10,000/-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 17 June, 2013 at about 9 AM while the victim was proceeding towards Khirpai through Ghatal-Khirpai Road at that time the offending vehicle bearing registration no. WB-39/9745(truck) coming from Khirpai side with excessive high speed and in rash and negligent matter dashed the victim with great force near Bahara village, as a result of which victim sustained severe injuries on his head, chest and all over his body. The local people immediately shifted the victim to Ghatal S.D. Hospital and thereafter he was referred to S.S.K.M. Hospital but he succumbed to his injuries and died on the way. On account of sudden demise of the deceased-victim, the claimants being the widow and children of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.7,00,000/-.

The claimants in order to establish their case examined three witnesses including claimant no.1, widow of the deceased, and produced number of documents which has been marked as **Exhibit 1 to 4** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, both oral and documentary, the learned tribunal granted compensation of Rs.4,10,000/- 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 claimants have preferred the present appeal.

Mr Saidur Rahaman, learned advocate for appellants-claimants submits that the learned tribunal erred in taking into account the monthly income of the deceased of Rs. 4500/-whereas it ought to have considered the income of the deceased at Rs.12,000/-per month since the deceased during his lifetime used to carry on the business of selling bakery products.

He further submits that as per the voter's identity card the age of the deceased at the time of accident was 50 years 5 months which should form the basis of adopting multiplier of 13 however the learned tribunal erroneously considering the age of the deceased victim of 55 years in the post-mortem report adopted multiplier of 11.

Moreover, it is submitted that since at the time of accident the deceased had four dependents hence following the observation of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298*** the deduction towards personal and living expenses of the deceased should be one-fourth of his annual income instead of one-third.

He further submits that since at the time of accident the deceased was more than 50 years of age and was self-employed as such following the observation of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** an additional amount equalling of 10% of the annual income of the deceased should be taken into account towards future prospect.

Furthermore, it is submitted that the claimants are also entitled to general damages of Rs. 70,000/-under the conventional heads.

In view of his above submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr Soumalya Ganguly, learned advocate for respondent no.1-insurance company submits that although in her oral evidence PW1, widow of the deceased, deposed that her deceased-husband used to sell bakery products and was a partner of *Kalimata* Food Product yet during the proceedings before the learned tribunal not a single scrap of paper relating to business or partnership of the deceased has been produced by the claimants. He further submits that PW1, widow of the deceased, also stated that the deceased was holding a PAN card issued by the Income Tax Department however no such statement of income has been submitted before the court in support of income of the deceased. Therefore, the income determined by the learned tribunal should be affirmed.

He further submits that the learned tribunal has rightly taken into consideration the age of the deceased appearing in the post-mortem report and has based such age for adopting multiplier which does not call for interference.

In light of his aforesaid submissions, he prays that the appeal be dismissed.

Since respondent no.2-owner of the offending vehicle did not contest the claim application before the learned tribunal and the case was disposed of *exparte* against him hence service of notice of appeal upon the said respondent is dispensed with.

Having heard the learned advocates for the respective parties, it is found that the appellants-claimants have preferred to present appeal precisely on the following grounds. *Firstly,* that the learned tribunal erred in determining the income of the deceased; *Secondly,* the multiplier should be 13 instead of 11; *Thirdly,* the deduction towards personal and living expenses should be one-fourth instead of one-third; *Fourthly,* the claimants are entitled to general damages under the conventional heads of Rs.70,000/-and *lastly,* the claimants are entitled to future prospects.

With regard to determination of income, it is found that the learned tribunal determined the income of the deceased-victim at Rs.4,500/- per month on the ground that the claimants failed to produce cogent documentary evidence in support of their assertion of income of Rs.12,000/- per month of the deceased-victim. The claimants in order to establish the income of the deceased has examined widow of the deceased PW1 Sabita Pandit and one Laxmikanta Santra as PW3. In her evidence-in-chief PW1, widow of the deceased, deposed that her deceased-husband was a businessman by profession and used to sell bakery products like biscuits, bread and cakes to different shops and was also a partner of *Kalimata* Food Product. In cross-examination PW1 stated that her husband held PAN card issued by Income Tax Department which she shall file before the court. PW3 also stated that the deceased used to sell bakery products. Be that as it may, no such documentary evidence was produced before the tribunal in support of the income of the deceased as stated by the witnesses. Since the claimants have asserted that the deceased-victim had business and was a partner of *Kalimata* Food Product it was incumbent upon them to produce relevant documents relating to business of the deceased which they have failed to do. Thus, the income of the deceased stated by the claimants in the claim application as well as in their evidence cannot be accepted in the absence of necessary documents as has been rightly observed by the learned tribunal. Since the accident has taken place in the year 2013 bearing in mind the price index prevalent at the material point of time the income of the deceased of Rs. 4500/- per month as determined by the learned tribunal appears to be appropriate and hence does not call for interference.

With regard to the multiplier, it is found that the learned tribunal considering the voter's card and the post-mortem report of the deceased held that the age of victim at the time of accident falls in between 50 years and 55 years. Mr Ganguly, learned advocate for respondent no.1-insurance company has argued that the age of the victim appearing in the post-mortem report is to be accepted. The doctors prescribe the age in the post-mortem report on the basis of analysis which can be appropriate but cannot be accurate. Therefore, the age prescribed in the post-mortem report can be accepted in the absence of Ration Card, Birth Certificate, Passport, Aadhar Card and Voter's Identity Card. When the self-declared age is available in the Voter's identity card issued by a concerned Government Department the same shall be taken into consideration for determining the age of the deceased and there is no justification to reject the said contemporaneous document disclosing the age placed before the court. As per the voter's identity card the age of the victim as on 1st January, 1995 was 32 years as appearing from the impugned judgement. Since the accident has taken place on 17 June 2013 the age of the victim on the relevant date of accident is 50 years 5 months.

Following the observation of Hon'ble Supreme Court in ***Sarla Verma's Case*** (***supra***) the multiplier should be 13 instead of 11.

As regards the deduction towards personal and living expenses is concerned, it is found from the impugned judgment that learned tribunal has deducted one-third of the annual income of the deceased towards his personal and living expenses however since the number of dependents of the deceased is four, hence following the proposition of Hon'ble Supreme Court in ***Sarla Verma's Case (supra)*** the deduction towards personal and living expenses of the deceased should be one-fourth instead of one-third.

It is found that the deceased at the time of accident was more than 50 years of age and was self-employed hence following the observation of Hon'ble Supreme Court in ***Pranay Sethi's Case (supra)*** an additional amount equalling to 10% of the annual income of the deceased is to be taken into account for calculation of compensation.

Further the claimants are also entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses of Rs.15,000, Rs.40,000 and Rs.15,000 respectively in view of the aforesaid decision in ***Pranay Sethi's Case (supra).***

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

Calculation of compensation

Monthly Income...Rs.4,500/-

Annual Income.....(Rs.4,500/- X 12)............ Rs54,000/-

Add: Future Prospects @ 10% of total Income..Rs.5,400/-

Annual loss of Income................................Rs.59,400/-

Less: Deduction of 1/4th of the Annual Income

(towards personal and living expenses)........... Rs.14,850/-

Rs.44,550/-

Adopting multiplier 13 (Rs.44,550/- X 13)...Rs.5,79,150/-

Add: General Damages.................................Rs.70,000/-

Loss of estate............Rs.15,000/-

Loss of consortium......Rs.40,000

Funeral Expenses.......Rs.15,000

Total Compensation...........................Rs.6,49,150/-

Thus, the total compensation amount comes to Rs. 6,49,150/-. Admittedly the claimants have received an amount of Rs. 4,10,000/-together with interest as granted by the learned tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 2,39,150/-along with interest @ 6% per annum from the date of filing of the claim application till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs. 2,39,150/-along with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation, if not already paid.

Upon deposit of the aforesaid balance amount of compensation together with interest learned Registrar General, High Court, Calcutta shall release aforesaid amount in favour of the claimants, after making payment of Rs. 30,000/-to appellant no.1, widow of the deceased, (since Rs. 10,000/-has already been received by her towards loss of consortium) towards spousal consortium, in equal proportions and upon satisfaction of their identity and on payment of *ad valorem* court fees, if not already paid.

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

All connected applications if any stands disposed of.

Interim order if any stands vacated.

Let a copy of this order be forwarded to the learned tribunal along with lower court records.

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

(Bivas Pattanayak, J.)