IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

07.02.2023
SL No.10
Court No. 654
Ali

F.M.A. 1047 of 2022
IA No.: CAN/1/2022

The National Insurance Co. Ltd.
Vs.
Smt. Mamata Das & Ors.

Mr Sanjay Paul
....for the appellant -Insurance Co.

Mr Anup Kumar Pal
.... for respondents- claimants

This appeal is preferred against the judgement and award dated 11th November, 2021 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Paschim Medinipur (Sadar) in M.A.C Case no. 574 of 2016 granting compensation of Rs.11,35,400/-together with interest in favour of the claimant no.1 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 18th November, 2016 at about 6:30 PM while the deceased was attending to his nature's call standing beside his motorcycle on Mohanpur-NH6 pitch road near HP Petrol Pump at Jinsahar at that time the offending vehicle bearing registration no. WB-33C/8252 (Maruti Car) coming from Mohanpur side towards Debra in a high-speed and in rash and negligent matter dashed the deceased with great force, as a result of which the victim sustained injuries on his person. The victim was immediately shifted to Medinipur Medical College & Hospital wherefrom he was referred to S.S.K.M. Hospital and on 21.11.2016 the victim succumbed to his injuries and died. On account of sudden demise of the victim, the parents and minor sister of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.15,00,000/- together with interest.

The claimants in order to establish their case examined three witnesses and produced documents which have been marked as **Exhibits 1 to 10** respectively.

Appellant-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs.11,35,400/-together with interest in favour of the claimant no.1. However, it refused to grant compensation in favour of claimant no.2, father and claimant no.3, minor sister of the deceased.

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

Mr Sanjay Paul, learned advocate for appellant-insurance company submits that the learned tribunal erred in determining the income of the deceased by taking into consideration the salary of three months appearing in the income certificate for the month of August 2016, September 2016 and October 2016 and failed to appreciate that the deceased was employed in A.S. Das & Sons Company on *no-work-no pay* basis and his job was temporary in nature and therefore the last drawn salary for the month of October 2016 amounting to Rs.6,498/- is to be taken into account for computing compensation amount.

He further submits that the learned tribunal ought not to have allowed compensation under the conventional heads of loss of consortium to the mother of the deceased. In view of decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** only spouse is entitled to loss of consortium and therefore the grant of amount towards loss of consortium is to be rectified.

In light of his aforesaid submissions, he prays for modification of the impugned award.

In reply to the aforesaid contentions raised on behalf of the appellant insurance company, Mr Anup Kumar Pal, learned advocate for respondents-claimants submits that the certificate issued by the employer **(Exhibit 8/1)** as well as the salary register **(Exhibit 9)** shows that the deceased-victim prior to accident used to earn around Rs.7,000/- per month as has been rightly held by the learned tribunal.

He further submits referring to the decision of Hon'ble Supreme Court passed in ***Magma General Insurance Co. Ltd versus Nanu Ram and others*** reported in ***2018 ACJ 2782*** that the parents are entitled to filial consortium and therefore the amount granted by the learned tribunal towards loss of consortium should be affirmed following such observation of the Hon'ble court.

By order dated 10th November 2022 service of notice of appeal upon respondent no.4-owner of the offending vehicle has been dispensed with.

Having heard the learned advocates for respective parties, it is found that the appellant-insurance company has raised two fold grounds *firstly,* that the learned tribunal erred in determining the income of the deceased and *secondly,* that the learned ought not to have granted loss of consortium in favour of mother of the deceased.

With regard to the determination of income of the deceased, it is found that the learned tribunal after the considering the certificate issued by the employer **(Exhibit 8/1)** and the salary register **(Exhibit 9)** assessed the income of the deceased at

Rs.7,000/- per month. Mr Paul, learned advocate for appellant-insurance company submitted that the last salary drawn by the deceased should be taken into account. The claimants in order to establish income of the deceased examined one Rakhes Mondal as PW2 Supervisor of *A.S Das & Sons Company* who produced the certificate of income and salary register before the court which are marked **Exhibit 8/1** and **Exhibit 9** respectively. In his cross-examination he stated that the deceased used to work as a labour under *no-work-no pay* basis which was purely of temporary nature. On perusal of the income certificate as well as the salary register it is found that the deceased received salary of Rs.7063/-in the month of August 2016, Rs.7063/- in the month of September 2016 and Rs. 6498/-in the month of October 2016. Thus the deceased at the time of accident used to earn roughly around Rs.7,000/- per month and the determination of income to that extent made by the learned tribunal does not call for interference.

The second issue precisely relates to a principal legal question whether in the light of decision of Hon'ble Supreme Court passed in ***Nanu Ram's Case (supra)*** it is permissible to grant 'filial consortium' to the mother of the deceased notwithstanding the decision of the Constitution

Bench of the Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra).***

Upon conjointly going through paragraph no.48 and paragraph no.54 of the decision in ***Pranay Sethi's case (supra)*** it is quite evident that the head under 'loss of consortium' is confined only to the spouse. In the case of ***Nanu Ram (supra)*** the two judge Bench referred to other forms of consortium including parental and filial consortium in addition to spousal consortium and granted an amount of Rs.40,000/- each for loss of filial consortium in favour of father and sister of the deceased. Even though filial consortium was granted but while dealing with the head of 'loss of consortium' and referring to ***Pranay Sethi's case (supra)*** in such context, the Hon'ble court in ***Nanu Ram (supra)*** observed as follows.

> *"23.The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded for loss of filial consortium.*
>
> *24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'loss of consortium' as laid down in Pranay Sethi. In the present case,*

> *we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000/-for loss of filial consortium.*

From the above the law relating to 'loss of consortium' has been left untouched and ***Pranay Sethi's case (supra)*** has been said to rule the field. The additional quantum on account of filial consortium as awarded in ***Nanu Ram (supra)*** is at best been allowed in exercise of authority under Article 142 of the Constitution of India in order to render complete justice in the facts and circumstances of the case. As a court of appeal under Section 173 of 1988 Act, this court does not have such power. It is clear that the amount towards loss of estate, loss of consortium and funeral expenses has already been quantified by the Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** at Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. Once the decision of the Constitution Bench of the Hon'ble Supreme Court is cited it must be applied and no different view can be subscribed as it is a law laid down within the meaning of Article 141 of the Constitution of India. Accordingly, no further amount shall be granted towards loss of consortium beyond the figure provided as above by the Constitution Bench. Therefore, the argument advanced by learned advocate for respondents-claimants falls short of merit.

The other factors and finding of the learned tribunal has not been challenged in the present appeal. Bearing in mind the above, the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income....................................Rs.7,000/-
Annual Income...(Rs.7,000/- X 12).....Rs. 84,000/-
Add: 40% of annual Income
towards future prospect...............Rs.33,600/-
Annual loss of Income......................Rs.1,17,600/-
Less: Deduction 1/2 of the Annual
Income towards personal
and living expenses.............................Rs.58,800/-
Rs.58,800/-

Adopting multiplier 18
(Rs.58,800/- X 18)..........................Rs.10,58,400/-
Add: General Damages.........................Rs.30,000/-
Loss of estate....Rs.15,000/-
Funeral Expenses.......Rs.15,000/-
Add: 10% on general damages................Rs.3,000/-
Total Compensation..................Rs.10,91,400/-

Thus the respondent no.1-claimant is entitled to Rs.10,91,400/- together with interest at 6% per annum from the date of filing of the claim application till deposit. It is found that the insurance company has deposited as sum of Rs. 15,14,654/- in terms of order of this court dated 6.7.2022 vide OD challan no.1330 dated 26.2022. Aforesaid deposit alongwith accrued interest be adjusted against the compensation amount and the interest thereon.

Respondent no.1-claimant is directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

The Registrar General, High Court, Calcutta shall release the compensation amount in favour of respondent no.1, mother of the deceased upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

After full satisfaction of the award if any amount is left over, the same shall be refunded to the insurance Company.

With the aforesaid observation, the appeal 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.

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.)