21.04.2023
Ct. no.654
Item no.120
sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 1067 OF 2015
IA No.CAN/1/2017(Old CAN 4113/2017)

Smt. Moonmun Biswas & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Ors.

Mr. Saidur Rahaman
...for the Appellant
Mr. Sanjoy Paul
..for the respondent

This appeal is preferred against the judgement and award dated 13th August, 2014 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, Raiganj, Uttar Dinajpur in MAC case no.126 of 2009 under Section 166 of the Motor Vehicles Act,1988 granting compensation of Rs.4,50,000/- in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

By order dated 9th February, 2023, learned advocate for the appellants-claimants was directed to file informal paper books.

Mr. Saidur Rahaman, learned advocate for the appellants-claimants submits that he has yet to receipt certified copy of the all the relevant documents. He submits for dispensing with preparation of informal paper books since the Lower Court Records have been received and the appeal relates only to enhancement of compensation amount.

Mr. Sanjay Paul, learned advocate for the respondents- insurance company concurs the submissions advanced on behalf of the appellants.

In view of the above submissions made by the respective parties, the preparation of informal paper books is dispensed with.

The brief fact of the case is that on 21.09.2009 at about 11-45 hours while the victim was returning to his house on his motor cycle from Durgapur, at that time the offending vehicle bearing registration number WB-61/0316 (Maxi-Taxi) in a high speed and in rash and negligent manner dashed the victim near Bethani School on NH-34, as a result of which the victim sustained severe injuries on his person. Immediately, the victim was removed to Rajganj Sadar Hospital where the victim was declared as brought dead. On account of sudden demise of the victim, the claimants being the widow, two minor sons and parents of the deceased filed an application for compensation of Rs.4,50,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examination of two witnesses and produced documents which have been marked as **Exhibits 1-8** respectively.

The respondent no.1-insurance Company did not adduce any evidence.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.4,50,000/- in favour of the claimants under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgement and award of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Saidur Rahaman, learned advocate for the appellants-claimants, at the very outset, submits that though the learned Tribunal assessed the compensation to the tune of Rs.7,29,500/- , yet, granted compensation of Rs.4,50.000/- on the ground that higher amount was not claimed. He submits that the learned Tribunal is to award just compensation in terms of Section 168 of the Motor Vehicles Act, irrespective of the claim amount mentioned in the claim application. He further submits that since at the time of accident the victim was aged about 26 years and was self-employed person carrying business, hence, an amount equivalent to 40% of the annual income of the deceased should be taken into account towards future prospects. Moreover, the claimants are also entitled to general damages of Rs.70,000/- in view of the decision of the in Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others,*** reported in ***2017 ACJ 2700***. Furthermore, he submits that the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd, since the number of dependents is 4. He further submits that the learned Tribunal did not grant any interest on the compensation amount and the interest was granted as a default clause and as such the claimants are entitled to interest on the compensation amount.

Mr. Sanjay Paul, learned advocate for the respondent no.1-insurance company submits that the Tribunal under law is to assess just compensation. However, he opposes prayer for enhancement of the compensation amount.

In spite of service of notice of appeal, the respondent no.2, owner of the offending vehicle, is unrepresented.

Having heard the learned advocates for the respective parties, it is found that the appellants have precisely raised the following issues. *Firstly,* whether higher compensation amount can be granted than what has been claimed in the claim application. *Secondly*, whether the claimants are entitled to future prospect equivalent to 40% of the annual income of the deceased. *Thirdly,* whether the claimants are entitled to general damages of Rs. 70,000/-. *Fourthly*, whether the deduction towards personal and living expenses should be $1/4^{th}$ instead of $1/3^{rd}$ and *lastly*, the whether the claimants are entitled to interest on the compensation amount.

So far as the first aspect is concerned, the learned Tribunal is to award just compensation in terms of Section 168 of the Motor Vehicles Act. It is no more *res-integra* that even if the claimed amount is lower than the compensation assessed, the learned Tribunal is to grant the amount assessed by it. I find substance in the submissions made by Mr. Rahaman in this regard.

With regard to the future prospects since at the time of accident the victim was 25 ½ years old and was self employed carrying business of his own, following the proposition laid down in *Pranay Sethi's case (supra)* an amount equivalent to 40% of the annual income of the deceased should be taken into account.

With regard to the third issue relating to general damages, following proposition in *Pranay Sethi's case (supra)*,the claimants are also 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.

With regard to the fourth issue relating to deduction towards personal and living expenses of the deceased, it is found that the learned Tribunal has deducted 1/3rd of the annual income of the deceased towards personal living expenses. However, it is found that the deceased had four dependants. Following the observations of the Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298***, the deduction towards personal and living expenses should be 1/4th instead of 1/3rd.

With regard to the last issue relating to grant of interest, it is found from the impugned award that the interest has been awarded as a default clause. However, the claimants are entitled to interest on the compensation amount in terms of Section 171 of the Motor Vehicles Act. Accordingly, the compensation amount shall carry interest.

The other factors has not been challenged in this appeal.

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

Calculation of Compensation

Monthly Income	Rs.5,000/-
Annual Income (Rs.5,000 X12)	Rs.60,000/-

Add: Future prospect @ 40%	Rs.24,000/-
Total annual income (Rs.60,000/- + Rs. 24,000/-	Rs.84,000/-
Less : 1/4th for personal Expenses	Rs. 21,000/-
	Rs.63,000/-
Multiplier 17(Rs. 63,000/-x17)	Rs.10,71,000/-
Add : General damages –	Rs.70,000/-
	Rs.11,41,000/-

Thus, the total compensation amount comes to Rs.11,41,000/-. It is informed that the claimants have already received the compensation amount of Rs.4,50,000/- as granted by the learned Tribunal.

Accordingly, the appellants-claimants are entitled to balance amount of Rs. 6,91,000/- together with interest @ 6% per annum from the date of filing of the application(17.11.2009) till the deposit. Appellants-claimants are also entitled to interest @ 6% per annum on the compensation amount of Rs.4,50,000/- from the date of filing of the claim application till deposit of the awarded sum was made before the learned Tribunal.

Respondent no.1-insurance company is directed to deposit the aforesaid balance amount and interest by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The appellants-claimants are directed to deposit *ad valorem* court fees on the enhanced amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount, the learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants, after making payment of Rs.40,000/- in favour of the appellant no.1, widow of the deceased, towards loss of consortium, in equal proportion upon satisfaction of their identity and payment of *ad valorem* court fees on the enhanced amount, if not already paid.

The appellant no.1, being the mother and natural guardian of minor appellant nos. 2&3, shall receive the share of the minors on their behalf and keep the share of the minors in a fixed deposit scheme of a nationalised bank or post office till attainment of majority of the minors.

With the aforesaid observations, the appeal stands disposed of.

All the connected applications, if any, stands 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 Court below for information.

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

(Bivas Pattanayak, J.)