18.07.2023
Ct. no.654
Item No.13
KB

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

FMA 295 of 2021

Keya Dinda
-Vs-
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
Ms. Afrin Nahar Mondal
... For the Appellant/Claimant.

Mr. Sanjay Paul
...For the respondents/Insurance Co.

This appeal is preferred against the judgment and award dated 30th September, 2020 passed by the learned Additional District Judge, Special Court cum Motor Accident Claims Tribunal, Paschim Medinipore in MAC case no.157 of 2018 granting compensation of Rs.3,66,882/- 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 28th February, 2017 at about 7.00 hours the victim while proceeding from Ghatal to Shimulia by bicycle got down and stood at the extreme left of Badra bus stoppage, at that time the offending vehicle bearing registration no. WB-30P-9906 (Maruti Car) coming from Ghatal side in a high speed and in rash and negligent manner dashed the victim. As a result of which she sustained grievous injury all over her person and immediately thereafter she was shifted to

Ghatal Sub-divisional Hospital where the attending doctor declared her as dead on the same day. On account of sudden demise of the victim the claimant being the daughter of the deceased filed application for compensation of Rs. 5,00,000/- 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 **8** respectively.

The Respondent No.1-Insurance Company did not adduce any evidence.

By an order dated 16th June, 2023, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs.3,66,882/- 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 appellant-claimant has preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellant-claimant submits that the learned Tribunal, erred in deducting 1/2 of the annual income of the deceased towards her personal and living expenses. He submits that as per the statutory provision 1/3rd of the annual income of the deceased is to be deducted towards the personal and living expenses. The learned Tribunal misinterpreted the proposition in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298*** and applied deduction of 50% which is applicable in case of a bachelor to widow (deceased) herein, which cannot be sustained in the eye of law. He further submits that at the time of accident the victim was 47 years of age and was a contractual employee under Integrated Child Development Scheme (ICDS) and thus following the observations of Hon'ble Supreme Court in the decision of ***National Insurance Company Limited versus Pranay Sethi and Others,*** reported in ***2017 ACJ 2700***, the claimant is entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to his aforesaid submissions, Mr. Sanjay Paul, learned advocate for the respondent No. 1-Insurance Company submits that since at the time of accident the widow-victim did not have any dependant the spirit of the decision of *Sarala Verma (supra)* towards personal and living expenses is to be applied as is applicable in case of a deceased bachelor. He further submits that since the victim at the time of accident was living alone and as such considering her expenditure she might incur towards her livelihood the learned Tribunal has rightly deducted 1/2 of her annual income towards her personal and living expenses which does not call for any interference. In the light of his aforesaid submissions, he prays that the order of the learned Tribunal be affirmed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in deducting 1/2 of annual income of the deceased towards her personal and living expenses in stead of 1/3rd. *Secondly*, whether the claimant is entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect.

With regard to the first issue relating to deduction towards personal and living expenses, it is found that the learned Tribunal has deducted 1/2 of annual income of the deceased towards her personal and living expenses. It is not in dispute that the claimant is married and it is her own admission in evidence that she is not dependant on the income of her deceased mother. The Hon'ble Court in *Sarla Verma* (*supra),* while dealing with the aspect of deduction towards personal and living expenses of a deceased, observed that deduction in case of a bachelor should be 50% of his annual income. The deduction of 50% towards personal and living expenses in case of a bachelor was held by the Hon'ble Court in the aforesaid decision on the assumption that a bachelor would tend to spend more on himself and there is also possibility of his getting married in a short time in which event the contribution to the parent and siblings is likely to be cut drastically. It is found that no such observation has been made by the Hon'ble Court with regard to a widow having no dependency.

In this context, it is relevant to reproduce paragraph 26 of the aforesaid decision as hereunder.

> *"26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under he head of personal and*

> *living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act in respect of claims under Section 163-A of the Motor Vehicles Act,1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline"*

Since the victim was a widow having no dependents, the principles laid down by the Hon'ble Court in *Sarla Verma (supra) of* deduction of 50% towards personal and living expenses in case of a bachelor cannot be applied in her case. However, bearing in mind the statutory recognition of $1/3^{rd}$ deduction, I am of the view that an amount equivalent to $1/3^{rd}$ of annual income of the deceased should be taken into account towards her personal and living expenses in the peculiar facts and circumstances of this case.

So far as the future prospect is concerned admittedly the victim at the time of accident was 47 years of age and was in contractual employment under Integrated Child Development Scheme (ICDS) and, therefore, bearing in mind the principles laid down in *Pranay Sethi (supra),* the claimant is entitled to an amount equivalent to 25% of the annual income of the deceased 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

Monthly Income	Rs.4,319/-
Annual Income (Rs.4,319/- x 12)	Rs.51,828/-
Add: 25% of the annual income towards future prospect	Rs.12,957/-
	Rs.64,785/-
Deduction: 1/3rd towards personal and living expenses	Rs.21,595/-
	Rs.43,190/-
Multiplier 13 (Rs.43,190/- x 13)	Rs.5,61,470/-

Thus, the claimant is entitled to compensation of Rs. 5,61,470/- together with interest @ 6% per annum from the date of filing of claim application till payment.

It is informed that the claimant has already received the compensation of Rs.3,66,882/- together with interest in terms of order of the learned Tribunal.

Accordingly, the appellant-claimant is entitled to balance amount of Rs.1,94,588/- together with interest at the rate of 6% per annum from the date of filing of the claim application till payment.

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

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

Upon deposit of the balance amount and the interest as above, 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.)