

10.01.2023
sayandeep/samarpita
Sl. No. 32
Ct. No. 654

FMA 1358 of 2022

Ramesha Khan @ Kha & Anr.

Versus

HDGC ERGO General Insurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mandal
.....for appellants-claimants

Mr. Soumalya Ganguli,
.....for Insurance Company

This appeal is directed against the judgment and an award passed on 23rd March, 2021 by the learned Judge Motor Accident Claims Tribunal, 2nd Court, Bankura in M.A.C. Case No. 27 of 2017 (21 of 2017) accordingly compensation in favour of appellant No. 1 to the tune of Rs.2,86,000/-along with interest.

The informal paper book filed by the learned Advocate for the appellants-claimants is taken on record.

The brief fact of the case is that on 4th December, 2016 while the victim was returning to his house from Patpur on foot at that time the offending vehicle bearing registration no. WB-67A/8099 hit the victim, as a result of which the victim sustained severe injuries and succumbed at the spot. On account of sudden demise of the deceased-victim the claimants being the wife and son filed application under Section 166 of the Motor

Vehicles Act, 1988 claiming compensation of Rs. 6,00,000/-.

The claimants in order to establish their case examined three witnesses and proved number of documents which have been marked as **Exhibit 1 to 7** respectively.

The respondent no. 1-Insurance Company also adduced the evidence of one witness and produced documents which has been marked as **Exhibit A & Exhibit B** respectively.

Upon consideration of the materials on record and the evidence placed before it, the learned Tribunal granted compensation in favour of the claimant no. 1 Ramesha Khan @ Kha amounting to Rs. 2,86,000/- along with interest. However, the learned Tribunal refused to allow any compensation in favour of claimant no. 2 for want of proof of his dependency upon the deceased-victim.

Being aggrieved and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

Mr. Jayanta Kumar Mondal, learned Advocate for appellants-claimants submits that since the accident has taken place in the year 2016, hence considering the prevailing price index and the catena of decision of this court the monthly income of the deceased victim should be considered at Rs. 5000/-. He further submits that

since at the time of accident the victim was a vegetable seller and was aged 57 years as such an amount equalling to 10% of the annual income of the deceased should be considered towards future prospect. In light of his above submission he prays for enhancement of the compensation amount.

Mr. Soumalya Ganguli, learned advocate appearing on behalf of the respondent no. 1-insurance Company opposes such prayer for enhancement.

By order dated 17.11.2022 the service of notice of appeal upon respondent no. 2-owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Having heard the learned advocate of respective parties, I now proceed to decide the issues involved in the present appeal. Appellant has challenged the impugned judgement and award of the learned Tribunal precisely on two fold grounds, *firstly*, that the income of the deceased-victim ought to have been considered at Rs. 5000/- per month and *secondly*, the claimants are entitled to future prospect.

With regard to the first issue it is found that the learned Tribunal considered the income of the deceased at Rs. 3,000/- per month since no document was produced. Be that as it may, since the accident has taken place in the year 2016, considering the price index prevalent during the said period as well as

bearing in mind catena of decisions of this Hon'ble Court taking into account Rs. 5,000/- as the monthly income of the victim in the event of accident occurring in the year 2015 and onwards, I am of the view that an amount of Rs. 5,000/- should be considered as monthly income of the deceased-victim for computation of just compensation.

Further with regard to the second issue following the observation of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** since deceased victim at the time of accident was 57 years of age and was self-employed, hence an amount equalling to 10% of the annual income of the deceased-victim should be taken into account towards future prospect.

The other findings of the learned Tribunal such as deduction towards personal and living expenses of the deceased, general damages and the entitlement have not been challenged in the appeal.

Keeping in mind the aforesaid calculation is of compensation is hereunder.

Calculation of compensation

Monthly Income.....	Rs.5,000/-
Annual Income...(Rs.5000/- X 12).....	Rs. 60,000/-
Add: Future Prospects @ 10% of total Income..	<u>Rs.6,000/-</u>
Annual loss of Income.....	Rs.66,000/-
Less: Deduction 1/3 rd of the Annual Income	
towards personal and living expenses ...	<u>Rs.22,000/-</u>
	Rs.44,000/-

Adopting multiplier 9(Rs.44,000/-X 9)....Rs 3,96,000/-
 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.4,66,000/-

Thus the amount of compensation is comes to Rs. 4,66,000/-. It is admitted by the appellant no. 1 that she has received an amount of Rs. 2,86,000/- along with interest in terms of order of the learned Tribunal. Accordingly appellant no. 1 is entitled to receive the balance amount of Rs. 1,80,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 15.3.2017) till deposit.

Respondent no.1-insurance Company is directed to deposit the balance amount of Rs 1,80,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 15.3.2017) till deposit by way of cheque before the learned Registrar General, High Court, Calcutta, within a period of six weeks from the date.

Appellant no. 1-claimant is directed to deposit *ad valorem* court fees on the enhanced amount of compensation, if not already paid.

Learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the said amount in favour of the appellant no. 1 upon

satisfaction of her identity and on payment of *ad valorem* court fees, if not already paid.

With the aforesaid observation the appeal stands allowed. The impugned judgment and award of the learned tribunal stands modified to the above extent. No order as to costs.

All connected applications if any stands disposed of.

Interim orders, if any stands vacated.

Urgent Photostat certified copy if applied for given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)