3.02.2023
SL No.13
Court No. 654
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 1297 of 2022

IA No:CAN/1/2022

Ruma Mondal & Anr.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
…for the appellants-claimants.
Mr. Sanjay Paul
…for the respondent No.1-Insurance Co.

This appeal is preferred against the judgment and award dated 14th November, 2019 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol, Paschim Bardhaman, in M.A.C. Case no. 32 of 2016 granting compensation of Rs. 15,23,760/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 2nd May, 2012 at about 9:00 PM while the victim was returning to his home from Jasaidih village by riding his Motor cycle bearing registration No. WB-40U/3836 after attending his duty at C.L. Jambad colliery (Bahula) and when he reached near Barabani Rail gate the offending vehicle bearing Registration No.DL-3CG/5108 (Ambassador Car) dashed the victim as a result of which the victim sustained serious injuries all over his body and was immediately taken to S.D. Hospital, Asansol and was admitted Central Hospital Dhanbad on the subsequent date. The victim was also admitted to AMRI, Kolkata on 05.05.2012. Thereafter the victim was treated at several hospitals. However during his treatment at Sanctoria Hospital he succumbed to his injuries and died on 18.06.2012 at about 3 AM. On account of sudden demise of the deceased-victim, the claimants being the widow and minor daughter filed application for compensation of Rs.20,00,000/-under Section 166 of the Motor Vehicles Act,1988.

The claimants in order to establish their case has examined four witnesses and produced documents which has been marked as **Exhibits 1 to 7** respectively.

The respondent No. 1-insurance company also adduced evidence of one doctor and produced documents marked as **Exhibit A and B** respectively.

Upon considering the materials on record and the evidence produced on behalf of the respective parties the learned tribunal granted compensation in favour of the claimants to the tune of Rs.15,23,760/-together with interest 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 Amit Ranjan Roy, learned advocate for appellants-claimants submits that the learned tribunal erred in considering the net income of the deceased instead of gross income. He further submits as per the decision of Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*** reported in ***2017 ACJ*** **2700** the claimants are entitled to 40% of annual income of the deceased towards future prospect however the learned erred in granting 25% which requires to be modified.

Mr. Sanjay Paul, learned advocate for respondent No. 1-insurance company submits that since the appellants-claimants did not produce the salary slip showing deduction on different heads, hence the learned tribunal was justified in taking into account the net income of the deceased. In light of the aforesaid submissions he opposes the prayer for enhancement.

By order dated 25th July, 2022 service of notice of appeal upon respondent No.2-owner of the offending vehicle has been dispensed with.

Heaving heard the learned advocate for respective parties, it is found that the appellants-claimants have precisely raised two issues in the present appeal, *firstly* that the learned tribunal erred in determining the income of the deceased on the basis of net income and secondly the claimants are entitled to an amount equaling to 40% of the annual income of the deceased towards future prospect.

With regard to the first issue relating to determination of income by the learned tribunal, it is found that the learned tribunal has taken into account the net income of the deceased-victim on the basis of salary particulars **(Exhibit-7)** produced by the claimants. On perusal of salary particulars it appears that save and except gross payment and net payment there are no such columns specifying the heads of deductions. PW-3, Ranjan Chanda, Personal Manager of ECL Jambad colliery, produced the salary particulars of the deceased, however he failed to clarify the amount of deduction that were made from the gross payment of the deceased-victim. The claimants have not taken any further steps to clarify the situation. In the absence of such cogent evidence, I do not find any infirmity in the finding of the learned tribunal determining the income of the deceased on his net income.

So far as the entitlement of future prospect is concerned, it is found that the learned tribunal allowed 25% of the annual income of the deceased towards future prospect. Mr. Roy, learned advocate for appellants-claimants asserted that the deceased was in a permanent employment with the ECL. It is relevant to note from the salary particulars **(Exhibit-**

7) that for the month of October, 2011 and April, 2012 the victim did not receive any payment due to non-attendance. Thus, from the above factor it manifest that the deceased was employed in no-work-no pay basis which is temporary in nature. Therefore, since the deceased at the time of accident was 35 years of age and was in temporary employment with the ECL, following the observation of Hon'ble Supreme Court in ***Pranay Sethi's Case (Supra)*** the claimants are entitled to additional amount equaling to 40% of the annual income of the deceased towards future prospect.

The other factors and findings of the learned tribunal has not been challenged in the appeal.

In view of the above discussion the calculation of compensation is made hereunder.

Calculation of compensation

Annual Income.. Rs.99,120/-
Add: Future Prospects @ 40% of total Income..Rs.39,648/-
Annual loss of Income...................................1,38,768/-
Less: Deduction of 1/3rd of the Annual Income
(towards personal and living expenses)........... ....Rs.46,256/-
Rs.92,512/-

Adopting multiplier 16 (Rs.92,512/- X 16)...Rs.14,80,192/-
Add: General Damages............................Rs.70,000/-
Total Compensation.......................15,50,192/-

Thus, the claimants are entitled to Rs. 15,50,192/-. Admittedly the claimants have received Rs.15,23,760/-together with interest as granted by the learned tribunal. Accordingly the claimants are entitled to enhance amount of compensation of

Rs.26,432/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

Respondent insurance company is directed to deposit the balance amount of compensation of Rs. 26,432/- alongwith interest 6% per annum from the date of filing of the claim application till deposit within six weeks from date.

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

Learned Registrar General, High Court, Calcutta shall release the amount of compensation in favour of the claimants in equal proportion 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 aforesaid extent. No order as to costs.

All connected applications, if any, stands disposed of.

Interim orders, if any, stands disposed of.

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

(Bivas Pattanayak, J.)