24.08.2023
Ct. 654
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1882 of 2018
With
CAN 1 of 2018 (Old No. CAN 1294 of 2018)

The New India Assurance Co. Ltd.
-Vs-
Smt. Sova Gayen & Ors.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
... for the appellant-Insurance Company
Mr. Laltu Mohan Ghosh
... for the respondent Nos. 1 & 2 -claimants

This appeal is preferred against the judgment and award dated 15th November, 2017 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 10th Court, Alipore, 24 Parganas (South) in MAC Case No. 100 of 2001 granting compensation of Rs. 3,90,000/- together with interest in favour of the claimant no. 1 under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th January, 2001 at about 14:30 hours the offending vehicle bearing registration No. WB-02/1735 (Taxi) moving through Amtala Baruipur Road in a rash and negligent manner dashed the minor-victim aged about 6 years near Nabutalla bus stop, as a result of which the victim sustained multiple injuries on her person and died at the spot. On account of sudden demise of the victim, the claimants being the parents filed application for compensation of Rs. 1,74,500/ together with interest under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined one witness and produced documents, which have been marked as **Exhibits 1** to **8** respectively.

The appellant-insurance did not adduce any evidence.

Since the respondent no. 2, owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 3,90,000/- together with interest in favour of the claimant no. 1 under Section 163A of the Motor Vehicles Act, 1988.

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 the appellant-insurance company submits that the learned Tribunal erred in determining the income of the minor-victim at Rs. 36,000/- per annum whereas it ought to have followed the Second Schedule to the Motor Vehicles Act which provides for notional income of Rs. 15,000/- per annum in case of non-earning persons. He fairly submits that the multiplier should be 20 instead of 15 adopted by the learned Tribunal. To buttress his contention, he relies on the decision of this Court passed in ***FMA 197 of 2019 (Ruksana Bibi & Another versus The Divisional Manager, National Insurance Company Limited & Another).*** He further submits that the learned Tribunal also erred in granting general damages of Rs. 30,000/- whereas it ought to have granted Rs. 4,500/- following the Second Schedule to the Act. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal.

Mr. Laltu Mohan Ghosh, learned advocate for the respondent nos. 1 & 2 (claimants) leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the minor-victim at Rs. 36,000/- per annum; *secondly*, whether the multiplier should be 20 in case of a minor instead of 15 adopted by the learned Tribunal and *lastly*, whether the learned Tribunal erred in granting general damages of Rs. 30,000/- instead of Rs. 4,500/-.

With regard to the first issue relating to determination of income of the minor-victim, it is found that the learned Tribunal has considered Rs. 36,000/- per annum as the income of the minor-victim. The Second Schedule to the Act provides for notional income of Rs. 15,000/- per annum in case of non-earning persons. This Hon'ble Court has consistently considered the notional income of Rs. 15,000/- per annum in case of a minor-victim in an application under Section 163A of the Act. [***See Sabina Yeasmin & Anr. versus The Branch Manager, New India Assurance Co. Ltd. & Anr.*** *reported in* ***(2016) 2 WBLR (Cal) 71*** and ***National Insurance Company Ltd. versus Jayanti Barik and Another*** *reported in* ***2019 (1) T.A.C. 201 (Cal.)].*** Therefore, in the facts and circumstances of the case, since the victim is a minor, the notional income of Rs. 15,000/- per annum should be taken into account for calculation of just compensation.

So far as the multiplier is concerned, it is found that the learned Tribunal has adopted multiplier of 15. This Court in *Sabina Yeasmin (supra)* and *Jayanti Barik (supra)* following the proposition laid down by the Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298***, has considered the multiplier for a victim of road accident who was aged below 15 years to be 20. Thus, the multiplier in this case in respect of a victim aged 6 years should be 20 instead of 15 adopted by the learned Tribunal.

Coming to the last issue relating to general damages, it is found that the learned Tribunal has granted Rs. 30,000/- under the conventional heads towards general damages. Following the Second Schedule to the Act, the claimants are entitled to Rs. 2,500/- towards loss of estate and Rs. 2,000/- towards funeral expenses.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Notional yearly income	Rs. 15,000/-
Less: 1/3rd towards personal and living expenses	Rs. 5,000/-
	Rs. 10,000/-
Multiplier 20 (Rs. 10,000/- x 20)	Rs. 2,00,000/-
Add: General damages Loss of estate: Rs.2,500/- Funeral expenses: Rs.2,000/-	Rs. 4,500/-
Total compensation awardable	Rs. 2,04,500/-

Thus the claimants are entitled to compensation of Rs.2,04,500/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

It is found that the appellant-insurance company has deposited a sum of Rs. 7,70,173 *vide* OD Challan No. 481 dated 7th June, 2018 and has also deposited an amount of Rs.25,000/- towards statutory deposit *vide* OD Challan No. 3343 dated 16th March, 2018 before the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

Relying on the decision in *Sarla Verma (supra),* the learned Tribunal granted compensation in favour of mother only. However, father being legal representative is also entitled to compensation.

Accordingly, learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest as indicated above in favour of the respondent nos. 1 and 2 (claimants) in equal proportion, upon satisfaction of their identity.

After satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the Insurance Company

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.

Let a copy of this order along with the lower court records be sent to the learned Court below for information in accordance with the rules.

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

(**Bivas Pattanayak, J**.)