14.08.2023
Ct. no.654
Sl. No.12
KB/Sayandeep

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 490 of 2021

Manashi Ghosh & Ors.
-Vs-
Oriental Insurance Co. Ltd. & Ors.

Mr. Jayanta Kumar Mandal
... For the appellants-claimants.

Mr. Rajesh Singh
... For the Respondents-Ins. Co.

This appeal is preferred against the judgement and award dated 3rd July, 2020 passed by Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Bankura in M.A.C. Case No. 164 of 2015 granting compensation of Rs.39,64,900/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 1st November, 2015 at about 02.10 P.M. while the victim was returning to his residence along with his family members by a vehicle bearing Registration No.WB-68N/3543 from Jairambati side through Sonamukhi-Bishnupur road and when the said vehicle reached near Village Bhatra, P.S. Bishnupur, District:Bankura the offending vehicle bearing Registration No.WB-39A/6001(Dumper) dashed the vehicle in which the victim was travelling in a rash and negligent manner. As a result of the said accident the victim and others died at the spot. On account of sudden demise of the victim the claimants, being the widow, minor daughter and father of the victim filed application for compensation of Rs.50,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents which have been marked as **Exhibits 1** to **14** respectively.

The respondent no.1-insurance company adduced evidence of two witnesses and produced documents which have been marked as **Exhibits A** to **E** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.39,64,900/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act.

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

Mr. Jayanta Kumar Mandal, learned advocate, for appellants-claimants submits that the learned Tribunal erred in determining the income of the deceased-victim inasmuch as it considered the net salary and the contribution to the General Provident Fund to calculate the actual income and thereafter deducted 10% towards income tax. However, as per the pay slip for the month of October, 2015 **(Exhibit-14)** the deduction towards income tax and professional tax is nil. Thus for calculating the actual income the gross salary less the tax paid should be taken into account. He further submits that the claimants are entitled to an amount equivalent to 50% of annual income of the deceased towards future prospect as well as general damages of Rs.70,000/- with escalation in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. Mr. Mondal in his usual fairness submits that the multiplier should be 15 instead of 16 adopted by the learned Tribunal in view of the decision of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298.***

In reply to the contention raised on behalf of the appellants-claimants, Mr. Rajesh Singh, learned Advocate for the respondent no.1-insurance company submits that the claimants-appellants have produced the Pay Slip for a single month, i.e. October, 2015. However, the salary slips for remaining 11 months prior to death of the deceased have not been produced which would have been proper and appropriate for establishing the income of the victim. The learned Tribunal has thus rightly calculated the actual income of the victim which does not call for interference. In the light of his aforesaid submissions, he prays for dismissal of the appeal.

Having heard the respective parties, the following issues have fallen for consideration.

Firstly, whether the learned Tribunal erred in determining the income of the deceased-victim.

Secondly, whether the claimants are entitled to an amount equivalent to 50% of the annual income of the deceased towards future prospect.

And *lastly*, whether the claimants are entitled to general damages of Rs. 70,000/- under the conventional heads with escalation.

With regard to the first issue, it is found that the learned Tribunal has calculated the total net monthly income of the victim and deducted 10% of the net income towards income tax to calculate actual income of the deceased. The actual income is to be calculated by deducting income tax and professional tax from the gross salary. As per the pay slip for the month of October, 2015 **(Exhibit 14)**, the gross monthly income of the deceased is Rs. 37,021/-. The income tax and professional tax are nil. There are no contrary evidence that the victim paid income tax or professional tax. Thus, the actual monthly income of the deceased victim comes to Rs. 37,021/-.

With regard to the second issue pertaining to future prospect, it is found that the deceased at the time of accident was more than 38 years but less than 40 years and was on permanent employment with Directorate General, Central Reserve Police Force. Following the observation of Hon'ble Supreme Court in *Pranay Sethi (Supra),* the claimants are entitled to an amount equivalent to 50% of the annual income of the deceased towards future prospect.

Further in view of the decision in *Pranay Sethi (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/- together with 10% escalation on the said heads respectively.

So far as the multiplier is concerned, it is found that learned Tribunal adopted multiplier of 16. However, following the observation of Hon'ble Supreme Court in *Sarla Verma (Supra*) since at the time of accident, the victim was more than 38 years to less than 40 years, the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid, calculation of compensation is made hereunder.

Calculation of Compensation

Monthly income	Rs.37,021/-
Yearly income (Rs.37,021/- x 12)	Rs.4,44,252/-
Add: 50% of the annual income towards future prospect	Rs.2,22,126 /-
	Rs.6,66,378/-
Less: 1/3rd towards personal and living expenses	Rs.2,22,126/-
	Rs.4,44,252/-
Multiplier 15 (Rs.4,44,252/- x 15)	Rs.66,63,780/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 10% escalation on general damages	Rs.7,000/-
Total compensation	Rs.67,40,780/-

Thus the total compensation comes to Rs.67,40,780/-. It is informed that the claimants have already received the amount of Rs. 39,64,900/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are entitled to the balance amount of compensation of Rs. 27,75,880/- together with interest at the rate of 6% per annum from the date of filing of the claim application till payment.

Respondent no. 1-insurance company is directed to deposit the balance amount of compensation and the interest as indicated above 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 balance amount of compensation, if not already paid.

Upon deposit of balance amount of compensation and the interest as indicated above, the learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants, after making payment of Rs.34,000/- in favour of appellant no. 1, widow of the deceased, towards spousal consortium (since Rs. 10,000/- has already been received), in the proportion that 50% of the amount shall be released in favour of appellant no. 1, 40% in favour of appellant no. 2 (minor daughter) and 10% in favour of the appellant no. 3, upon satisfaction of their identity and payment of *ad valorem* court fees.

Appellant no.1, being the mother and natural guardian of minor appellant no.2, shall receive the share of the minor on her behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office till attainment of majority of the appellant.

With the aforesaid observations, the present appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower Court records be transmitted to the learned Tribunal in accordance with Rules.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)