22.08.2023
Ct. no.654
Item no.11
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 359 of 2022

Hanufa Bewa Molla
Vs.
New India Assurance Co. Ltd. & Anr.

Mr. Anup Kumar Bag
…for the Appellant
Ms. Sucharita Paul
..for the respondents

This appeal is preferred against the judgment and award dated 14th December, 2021 passed by the learned Additional District Judge-cum- Judge, Motor Accident Claims Tribunals, 3rd Court, Berhampore, Murshidabad in MAC case no.570 of 2015 granting compensation of Rs.5,16,500/- 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 19th March, 2015 at about 12-00 noon while the victim was returning to his home after completion of his work at Bhaduripara UBI Bank and was standing near Bhaduripara Mosque More near Pakuria market on the State Highway at that point of time the offending vehicle bearing registration no. WB-57B/4251 which was proceeding towards Dhanirampur More in a rash and negligent manner dashed the victim, as a result of which the victim sustained injuries. Immediately the local people took the victim to Domkal SD Hospital, wherefrom the victim was shifted to Berhampore New General Hospital for treatment, where the victim succumbed with injuries and died. On account of sudden demise of the victim, the claimant being the mother filed application for compensation of Rs.4,17,100/- 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 **7** respectively.

The respondent no.1-insurance Company did not adduce any evidence.

By 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 appellant-claimant, the learned Tribunal granted compensation of Rs. 5,16,500/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned

Tribunal, the appellant-claimant has preferred the present appeal.

Mr. Anup Kumar Bag, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the income of the victim at Rs.4,000/- per month whereas it ought to have considered the income at Rs.7,000/- per month following the minimum rates of wages as per Schedule of employment under the Minimum Wages Act, since the victim at the time of accident was a Mason by profession, which has been established by the Assistant Labour Commissioner. He further submits that since the victim at the time of accident was 30 years of age, the multiplier should be 17 instead of 16 adopted by the learned Tribunal. Moreover, the claimant is entitled to general damages under the conventional head of Rs.30,000/- with 10% escalation. Further, the claimant is also entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellant-claimant, Ms. Sucharita Paul, learned advocate for the respondent no.1-insurance company submits that the claimant though examined the Assistant Labour Commissioner yet has failed to produce any documentary evidence in support of the income of the victim. The Assistant Labour Commissioner has categorically deposed in Court that they do not fix the wages of the beneficiary and such wages depends on the establishment in which beneficiary worked and therefore the schedule of minimum wages cannot be made applicable for determining the income of the victim.

Having heard the learned advocates for the respective parties, following issues that has fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim. *Secondly,* whether the multiplier should be 17 instead of 16 adopted by the learned Tribunal. *Thirdly,* whether the claimant is entitled to general damages of Rs.30,000/- with escalation of 10% and *Lastly,* whether the claimant is entitled to an amount equivalent to 40% of the annual income towards future prospect.

With regard to the determination of the income, it is found that the learned Tribunal has determined the income of the victim at Rs.4,000/- per month. The claimant in her claim application as well as in her evidence has claimed that the victim at the time of accident was Mason by profession and had monthly income of Rs.6,500/- per month. It is also claimed that the victim was registered with West

Bengal Building and Other Constructions Workers Welfare Board, Domkol, Murshidabad. The claimant adduced evidence of Assistant Labour Commissioner, who proved the identity card of the victim and register of registration of the West Bengal Building and Other Constructions Workers Welfare Board as Mason, namely, **Exhibits-6 & 7** which shows that the victim was registered as a Mason. On going through the evidence of PW-3, Bibhuti Bhusan Mondal, Assistant Labour Commissioner, it is found that the victim was registered as beneficiary under with West Bengal Building and Other Constructions Workers Welfare Board. Beneficiary identity card of West Bengal Building and Other Constructions Workers Welfare Board and register of registration for individual beneficiary **Exhibit-7** also shows that the victim was registered in the said Board under serial no.4380. PW-3 has deposed on clarification by the court that they do not fix the wages of the beneficiary and the wages depends upon establishment in which beneficiary worked. Thus to apply the rate as per minimum wages will be inappropriate since P.W.3 himself admitted that they do fix the wages of the beneficiary. He further deposed that the register is maintained by the department for giving benefits to the registered beneficiaries after six months of their registration. The victim is registered on 14th June,

2011. There are no documents showing receipt of any benefit for work done by the victim. The claimant also did not produce any document showing wages received from the establishment in which victim worked as a Mason. Such being the position, the claimant has failed to produce any document relating to the income of the victim. Though the evidence of PW-1, Hanufa Bewa Molla as well as register and identity card shows that the victim was a Mason by profession but the income has not been proved. However, bearing in mind catena of decisions of this Court and also considering the economic factors and prices of the essential commodities prevalent in the year 2015 when the accident has taken place, I am of the opinion that an amount of Rs.5,000/- per month should be appropriate and reasonable in the facts and circumstances of this case.

With regard to the second issue relating to multiplier, it is found that the learned Tribunal has adopted multiplier of 16. However, since the victim at the time of accident was 30 years of age, following the observations of the Hon'ble Supreme Court made in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors***., reported in ***2009 ACJ 1298***, the multiplier should be 17 instead of 16 adopted by the learned Tribunal.

With regard to the third issue relating to general damages, it is found that the learned Tribunal has granted an amount of Rs. 4,500/- on such head. However, following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimant is entitled to general damages under the conventional head of loss of Estate and funeral expenses of Rs. 15,000/- each with 10% escalation on such amount since three years have elapsed.

Coming to the last issue relating to future prospect, it is found that the learned Tribunal did not grant any amount towards future prospect. However, bearing in mind the proposition of the Hon'ble Supreme Court laid down in *Pranay Sethi (supra*), since at the time of accident, the victim was 30 years of age and was self-employed, the claimant is entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

The other factors have not been challenged in this appeal.

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

<u>Calculation of Compensation</u>

Monthly income	Rs.5,000/-
Annual income (Rs. 5000/- x 12)	Rs.60,000/-

Add: 40% of the annual income towards future prospect	Rs.24,000/-
	Rs.84,000/-
Less: 50% towards personal and living expenses	Rs.42,000/-
	Rs.42,000/-
Multiplier 17 (Rs.42,000/- x 17)	Rs.7,14,000/-
Add: General damages Loss of estate: Rs.15,000/- Funeral expenses: Rs.15,000/-	Rs.30,000/-
Add:10% escalation on general damages	Rs.3,000/-
Total compensation	Rs.7,47,000/-

Thus, the claimant is entitled to compensation of Rs. 7,47,000/- together with interest @ 6% per annum from the date of filing of claim application (30.06.2015) till payment.

It is informed that the claimant has already received an amount of Rs. 5,16,500/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimant is entitled to balance amount of compensation of Rs. 2,30,500/- together with interest @ 6% per annum from the date of filing of claim application (30.06.2015) till payment.

The respondent no. 1-Insurance Company is directed to deposit the balance amount of compensation together with interest as indicated above before the learned Registrar General, High Court, Calcutta by way of a cheque within a period of six weeks from date.

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

Upon deposit of the balance amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest 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.)