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Court
No. 11
G.S.Das

08.02.2023

FMA 1226 of 2022

Smt. Bulbuli Das Adhikary & Anr.
-Vs-
The Oriental Insurance Company Ltd & Anr.

Mr. Amit Ranjan Roy
… for the Appellants
Ms. Sucharita Pal
… for the Respondents

This appeal is preferred against the Judgment and Award dated 18th of November, 2016 passed by the Learned Judge, Motor Accident Claims Tribunal, 4th Court, Paschim Medinipur in M.A.C. Case No. 144 of 2012 granting the compensation of Rs. 4,41,500/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act.

The brief facts of this case is that on 21st February, 2012 at about 9.50 am while the victim was proceeding towards Feko-ghat from his house at Kanpur by his motor cycle for his personal work and when he reached near Baharuna-chawk, at that time, the offending vehicle bearing Registration No. WB 33A/5256 coming from Feko-ghat at a high speed and in rash and negligent manner dashed the victim. As a result of which the victim sustained grievous injuries on his head and body. Immediately the local people admitted the victim to Tapsia Primary Health Centre and thereafter for better treatment he was shifted to M.M.C.H. However, he succumbed to his injuries and on that very date he died. On account of sudden demise of the victim, the claimants being the widow and the minor son of the deceased filed an application for compensation of Rs. 6,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents which have been marked as **Exhibit 1 to 8** respectively.

The Respondent No.1/the Insurance Company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the Learned Tribunal granted compensation in favour of the claimants to the tune of Rs.4,41,500/- together with interest.

Being aggrieved and dissatisfied with the impugned Judgment and Award, the claimants have preferred the present appeal.

Mr. Amit Ranjan Roy, Learned Advocate for the appellants/claimants, submits that the Learned Tribunal erred in determining the income of the deceased and failed to appreciate and consider the certificate of income produced by the employer of the deceased, which ought to have been taken into account for determining the income of the deceased. In support of his contention, he relies on a decision of this Hon'ble Court in ***Royal Sundaram Alliance Insurance Company Limited versus Sulekha Mondal (Adhikary) & Ors. (FMA 3835 of 2016)***.

He further submits that the claimants/appellants are also entitled to an additional amount equalling to 25% of the annual income of the deceased towards future prospects in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi & Others.*** reported in ***2017 ACJ 2700.***

Furthermore, he submits that in view of the decision in *Pranay Sethi's Case*, the claimants/appellants are also entitled to general damages under the conventional heads of Rs.70,000/-.

In his usual fairness, he also submits that since at the time of the accident the deceased was 42 years of age, in view of observation of the Hon'ble Supreme Court in ***Sarla Verma & Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298,*** the multiplier should be 14 instead of 15 as adopted by the Learned Tribunal.

In reply to the contentions raised on behalf of the appellants/claimants, Ms. Sucharita Pal, Learned Advocate for the Respondent No.1/the Insurance Company, submits that the claimants/appellants though adduced the evidence of the employer of the deceased namely Tamash Kumar Das Adhikary as P.W.3 for establishing the income of the deceased, however, he failed to produce any document showing payment of salary of Rs.6,000/- per month as asserted by the claimants. Though P.W.3 produced income certificate **(Exhibit 8)** but that has not been supported by any cogent evidence and accordingly, the income of the deceased arrived at by the Learned Tribunal of Rs.3,600/-

per month should be affirmed.

She further submits that the Learned Tribunal erred in adopting multiplier of 15 instead of 14 since at the time of the accident the deceased was 42 years of age.

Since the Respondent No.2/the owner of the offending vehicle did not contest the claim application before the Learned Tribunal, hence service of notice of appeal upon the said respondent is dispensed with.

Having heard the Learned Advocate for the respective parties, it is found that the appellants/claimants have thrown challenge to the Award passed by the Learned Tribunal precisely on the following grounds, *firstly*, that the Learned Tribunal erred in determining the income of the deceased without appreciating the income certificate; *Secondly*, that the claimants are entitled to an additional amount equalling to 25% of the annual income of the deceased and *lastly*, the claimants are entitled to general damages of Rs.70,000/- under the conventional heads.

With regard to the determination of income of the deceased, it is found that the Learned Tribunal has determined the income of the deceased at Rs.3,600/- per month. Mr. Roy, Learned Advocate for appellants/claimants strenuously argued that the income of the deceased should be considered at Rs.6000/- per month as appearing in the income certificate (Exhibit 8). In order to establish the income of the deceased, the claimants have examined his employer, who is also the elder brother of the deceased namely Tamash

Kumar Das Adhikary as PW3, who proved the Income Certificate (Exhibit 8). PW3 deposed that he used to pay Rs.6000/- per month to the deceased. However, in his cross-examination, he sated that he has no register to show that he used to pay Rs.6,000/- per month to the deceased as remuneration. It is relevant to note that in his cross-examination, PW3 has deposed that he maintained all the registers of the said shop which in all probability suggests that he maintained the register for payment of remuneration paid to the employees. Accordingly, in the absence of such register of payment of remuneration, the Income Certificate (Exhibit 8) looses relevance. Be that as it may, in the case of ***Ramchandrappa versus Manager, Royal Sundram Allaince Company Limited*** reported in ***(2011) 13 SCC 236*** the Hon'ble Supreme Court observed as follows.

> *"14.We hasten to add that in all cases and in all circumstances, the tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time…………"*

Bearing in mind the aforesaid observation of Hon'ble Court and considering the price index prevalent during the said period and also keeping in mind the catena of decision of this

Court where the income has been considered at Rs.4,000/- per month in the event the accident had taken place in the year 2012, I am inclined to consider the income of the deceased at Rs.4,000/- per month. The facts of the cited decision in the case of *Sulakha Mondal (Adhikary)* is dissimilar to the facts in hand.

With regard to the future prospects, it is found that the Learned Tribunal did not grant any amount towards the future prospects. However, in view of the observation of the Hon'ble Supreme Court in *Pranay Sethi's* case, since at the time of the accident the deceased was 42 years of age and was under a temporary employment, an amount equalling to 25 per cent of the annual income of the deceased should be taken into consideration for future prospects.

So far as the general damages are concerned, it is found that the Learned Tribunal has granted Rs.9,500/- on such heads. However, bearing in mind the decision of the Hon'ble Supreme Court in *Pranay Sethi's* case, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses of Rs. 15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

Both Learned Advocate for the respective parties have fairly submitted that since at the time of accident the deceased was 42 years of age, hence in view of *Sarla Verma's Case*, the multiplier should be 14 instead of 15 as identified by the Learned Tribunal.

The other factors and findings of the Learned Tribunal has not been challenged.

Keeping in mind the above factors, the calculation of compensation is made hereunder.

Income		Rs.4,000/-
Add 25% future prospect	+	Rs.1,000/-
		Rs. 5,000/-
Annual Income	×	12
		Rs.60,000/-(per annum)
Less 1/3rd for personal Expenses	-	Rs.20,000/-
		Rs. 40,000/-
Multiplier		× 14
		Rs. 5,60,000/-
Add general damages	+	Rs. 70,000/-
		Rs.6,30,000/-
Less Principal award Received	-	Rs.4,41,500/-
Enhanced amount	=	Rs.1,88,500/-

Thus, the claimants are entitled to compensation of Rs.6,30,000/-. It is informed that the claimants have already received the compensation amount of Rs.4,41,500/- together with interest as granted by the Learned Tribunal.

Accordingly, the claimants are entitled to the balance amount of compensation of Rs.1,88,500/- together with interest at the rate of 6 per cent per annum on enhanced amount from the date of filing of the claim application (30.4.2012) till deposit.

The Respondent/Insurance Company is directed to deposit the balance amount of compensation of Rs.1,88,500/- together with interest at the rate of 6 per cent per annum on the enhanced amount from the date of filing of the claim application (30.4.2012) till deposit by way of a 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 enhanced amount of compensation, if not already paid.

Upon deposit of the enhanced amount of compensation and the interest as indicated above, the Learned Registrar General shall release the amount in favour of the claimants, after making the payment of Rs.35,000/- to the appellant no.1, the widow of the deceased, towards spousal consortium (since Rs.5,000/- is already received by the widow in terms of order of the Learned Tribunal), in equal proportion on satisfaction of their identity and payment of *ad valorem* Court fees on the enhanced amount, if not already paid.

With the above observations, FMA 1226 of 2022 stands disposed of. The impugned Judgment and Award of the Learned Tribunal is modified to the above extent.

There shall be no order as to costs.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)