

24.07.2023
Ct. 654
D/L 7
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMAT 231 of 2018

Binapani Chowdhury & Anr.
-Vs-
Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
... for the appellants-claimants

Mr. Saswata Bhattacharyya
... for the respondent no.1-insurance company

This appeal is preferred against the judgment and award dated 20th May, 2017 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 1st Court, Asansol, Paschim Bardhaman in MAC Case No. 13 of 2013 (Old No. 76 of 2012) granting compensation of Rs. 3,10,500/- together with interest in favour of the claimant no.1, mother of the deceased, under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 15th October, 2010 at about 6.15 p.m. while the victim along with his friend was going towards North Book Colony through NH-2 for visiting Durgapuja Pandel, at that time the offending vehicle bearing registration no. WMF 8721 (Ambassador) coming from Punjabi More Side in a rash and negligent manner dashed the victim and his friend

from back side at Sindbri Qrasher Machine. As a result of such accident, the victim and his friend sustained serious injuries. Immediately, the local people admitted them to Sub-Divisional Hospital, Asansol where both of them died on the same day. On account of sudden demise of the victim, the claimants being the parents filed application for compensation of Rs. 7,50,000/- 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 **Exhibits 1 to 7** respectively.

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

By order dated 15th 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 the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 3,10,500/- together with interest in favour of the claimant no.1, mother of the deceased, 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 the appellants-claimants submits that the claimants are entitled to future prospect of an amount equivalent to 40% of the annual income of the deceased in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. He further submits that the claimants are entitled to general damages of Rs. 30,000/- under the conventional heads. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

Mr. Saswata Bhattacharyya, learned advocate for the respondent no. 1- insurance company opposes such prayer for enhancement of the compensation amount.

Upon hearing the learned advocate for the appellants, it is found that the award of the learned Tribunal granting compensation in favour of mother of the deceased only has not been challenged in this appeal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the claimant no.1 is entitled to future prospect of an amount equivalent to 40% of the annual income of the deceased and *secondly*, whether the claimant no.1 is entitled to general damages of Rs. 30,000/- under the conventional heads.

With regard to the first issue, it is found that at the time of accident, the victim was less than 25 years of age and was self-employed. Following the observations of the Hon’ble Supreme Court made in *Pranay Sethi (supra)*, the claimant no.1 is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

With regard to the second issue, following the observations of the Hon’ble Supreme Court made in *Pranay Sethi (supra)*, the claimant no.1 is entitled to general damages under the conventions head of loss of estate and funeral expenses of Rs. 15,000/- each.

The other factors namely multiplier, income, deduction towards personal and living expenses have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs. 3,000/-
Annual income (Rs. 3,000/- x 12)	Rs. 36,000/-
Add: 40% of the annual income towards future prospect	Rs. 14,400/-
	Rs. 50,400/-
Less: 50% towards personal and living expenses	Rs. 25,200/-
	Rs. 25,200/-
Multiplier 17 (Rs. 25,200/- x 17)	Rs. 4,28,400/-
Add: General Damages Loss of estate: Rs.15,000/- Funeral expenses: Rs.15,000/-	Rs. 30,000/-
Total compensation	Rs. 4,58,400/-

Thus, the claimant no.1 is entitled to compensation of Rs. 4,58,400/- together with interest @

6% per annum from the date of filing of the claim application (30.05.2012) till payment. It is informed that the claimant no.1 has already received the awarded sum together with interest in terms of the order of the learned Tribunal. Accordingly, the claimant no.1 is entitled to balance amount of compensation of Rs. 1,47,900/- together with interest @ 6% per annum from the date of filing of the claim application (30.05.2012) till payment.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation and the interest indicated hereinabove by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The appellant no.1-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 indicated hereinabove, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant no.1-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 judgment and award of the learned Tribunal stands 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.**)