

22.09.2023
Ct. no.654
Sl. No.193
KB/sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

F.M.A. 108 of 2021

**Jayanti Dalapati & Ors.
Vs.**

The United India Insurance Co. Ltd. & Ors.

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

Mrs. Sucharita Paul
... For the respondents-insurance company.

This appeal is preferred against the judgment and award dated 3rd February, 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 319 of 2014 dismissing the claim application of the claimants filed under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 10th June, 2014 at about 5 A.M. while the victim was standing near Uttar Narkelda Pan Market on NH 41 under P.S. Tamluk, at that time one pick up van bearing registration no. WB-65A-9203 loaded with betel leaves came and was parked by the side of NH41. Soon thereafter some persons started unloading the betel leaves and another person was talking to the driver of the pick up van. Suddenly the offending vehicle bearing registration no. WB-29-9265 (Truck) came from Haldia side to Mecheda in a rash and negligent manner and dashed the pick up van from behind and the said pick up van dashed another stationary truck

standing in front of it. The pick up van was damaged in front and the offending vehicle fled away from the spot. As a result of such accident the victim and some other standing persons including the driver of the pick up van were seriously injured. The victim was taken to Purba Medinipur District Hospital at Tamluk where he was declared dead by the attending doctor. On account of sudden demise of the victim the claimants, being the wife, son and mother filed application for compensation of Rs.7,00,000/- 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 **7** respectively.

Respondent no.1-insurance company did not adduce any evidence.

By order dated 20th February, 2023, service of notice of appeal upon 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 dismissed the claim application of the claimants under Section 166 of the Motor Vehicles Act, 1988.

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

During the pendency of this appeal, the appellant no.3 Subhasini Dalapati alias Shobhasini Dalapati expired on 11th August, 2019 and by order dated 20th February, 2023 appellant nos. 3(a) to 3(e) being the legal heirs of deceased appellant were substituted in her place. By such order the opposite party no.3, in the claim application namely, Megha Dalapati was added as respondent no.3 in the Memorandum of Appeal.

Mr. Amit Ranjan Roy, learned advocate for appellants-claimants submits that the learned Tribunal erred in dismissing the claim application of the claimants without appreciating the evidence adduced on behalf of the claimants in support of their case. The learned Tribunal dismissed the claim application holding that the victim contributed to the negligence which is totally based on assumption since there are no evidence on record of contributory negligence of the victim. Accordingly, the order of dismissal of the learned Tribunal cannot sustain in the eye of law.

With regard to the quantum of compensation, he submits that P.W.3 has proved the documents from which it will be evident that at the time of accident the victim was a Cashier in Bangla Pan Arat and had monthly income of Rs.7,000/- per month which should be taken into account for determining the compensation. Moreover, as per the post mortem report, the victim at the time of accident was aged 45 years and as such the multiplier

should be 14. Further the claimants are also entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect. In light of his submission, he prays for setting aside the order of the learned Tribunal and granting compensation in favour of the claimants.

In reply to the contention raised on behalf of appellants-claimants, Mrs. Sucharita Paul, learned advocate for respondent no.1-insurance company submits that as per the evidence on record, the victim on the date of accident was talking to the driver of the pick up van which clearly manifest that the victim was standing on the right side of pick up van which is on the road itself and thereby he is guilty of contributory negligence and the learned Tribunal has rightly observed that the victim had contributed to the negligence. Thus the order of dismissal of the claim application by the learned Tribunal does not call for interference.

So far as the quantum of compensation is concerned, Mrs. Sucharita Paul, learned advocate for respondent-insurance company submits that the income of the victim has not been proved by any cogent evidence.

Having heard the learned advocates for the respective parties, the primary issue raised in the appeal is whether the learned Tribunal erred in dismissing the claim application of the claimants on the ground of contributory negligence of the victim.

In order to appreciate the aforesaid issue, it would be apposite to look to the evidence adduced on behalf of the claimants. The claimants in order to establish rash and negligent Act of the driver of the offending vehicle have examined one Sunil Guria as PW-2 and produced documents in the form of written complaint **(Exhibit-1)** and Charge-sheet **(Exhibit-2)** filed by the investigating agency. PW-2, Sunil Guria stated in his affidavit-in-chief that on 10th June, 2014 at about 5 a.m. while he was standing at Uttar Narkelda Pan Market he saw the victim near the said market. At that point of time, one Pick up van bearing registration no.WB-65/9203 came and parked at the market. Some persons were unloading betel leaf from the said pick up van and some others were talking to the driver, at that point of time one loaded truck bearing registration no.WB-29/9265 coming from Haldia side to Mecheda dashed the said pick up van from behind and fled away. Due to the said accident, some persons including the driver sustained injuries. He further deposed that he is an eyewitness to the occurrence. The presence of eyewitness on the relevant time of accident near scene the occurrence is not challenged in the cross-examination, rather his presence has been established in the cross-examination by his statement that on that day he came to the market to purchase betel leaf.

There is no evidence on record to suggest that on the date of accident the victim was standing on the road. The material on record also does not lead to the fact that the victim has guilty to the contributory negligence. No contrary evidence has been led from the side of the insurance company to primarily establish that there was contributory negligence on the part of the victim. The evidence of eyewitness is also corroborated by the written complaint and the charge sheet filed by the investigating agency against the driver of the offending vehicle. Considering the aforesaid materials on record, it is found that the claimants have succeeded in establishing that the accident took place due to rash and negligent driving of the offending vehicle by its driver. For such reasons, the order of dismissal of the claim application passed by the learned Tribunal is liable to be set aside.

Now, with regard to the quantum, the following aspects are to be determined.

- i) Multiplier.
- ii) Income.
- iii) Deduction towards personal and living expenses.
- iv) General damages.

With regard to the multiplier, the age of the victim is to be ascertained. The claimants excepting the post mortem report has placed no other documentary evidence with regard to the age of the victim. As per post mortem report, the victim at the time of accident was 45 years of

age. There is no contrary evidence to the aforesaid age of the victim. Following the observations of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in **2009 (6) SCC 121**, the multiplier should be 14.

With regard to the income of the victim, it is found that the claimants have examined the proprietor of Bangla Pan Arat (BM) as PW 3, who deposed that the victim worked in his Pan Arat as a Cashier. Be that as it may, in his cross-examination, this witness admitted that he has no document to show that the victim used to work under him. He also admitted that he has no document to show that he paid salary to his workers. Though, this witness proved income certificate **(Exhibit-7)**, however, such certificate is not supported by any documentary evidence. Therefore, salary certificate **(Exhibit-7)** cannot be accepted in the absence of supportive documentary evidence. Be that as it may, bearing in mind the economic factors prevalent at the time of accident in the year 2014, I am of the view that the monthly income of Rs.4,000/- per month would be reasonable and appropriate in the facts and circumstances of this case. Since at the time of accident the victim was 45 years of age and was self-employed, following the observations of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **(2017) 16 SCC**

680, the claimants are entitled to 25% of the annual income of the deceased towards future prospects.

So far as the deduction towards personal and living expenses of the victim is concerned, it is found that admittedly at the time of accident the victim had three dependants. Following observations of *Sarla Verma (supra)*, deduction towards personal and living expenses of the deceased should be 1/3rd.

Further the claimants are also entitled to general damages under the conventional heads loss of estate, loss of consortium and funeral expenses of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

Other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.4,000/-
Annual income (Rs.4,000/- x 12)	Rs.48,000/-
Add: 25% of the annual income towards future prospect	Rs.12,000/-
	Rs.60,000/-
Less: 1/3 rd towards personal and living expenses	Rs.20,000/-
	Rs.40,000/-
Multiplier 14 (Rs.40,000/- x 14)	Rs.5,60,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total:	Rs.6,30,000/-

The legal heirs of the deceased namely appellant nos. 1 & 2 and respondent no. 3 are entitled to

compensation of Rs. 6,30,000/- together with interest @ 6% per annum from the date of filing of the claim application (21.07.2014) till payment.

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

Upon deposit of the aforesaid amount of compensation, the learned Registrar General, High Court, Calcutta shall release the amount of compensation in favour of the appellant nos.1 & 2 and respondent no.3, after making payment of Rs. 40,000/- in favour of the appellant no.1, widow of the deceased, towards spousal consortium, in the proportion that appellant no.1 shall receive 60% and the appellant no.2 and the respondent no.3 shall receive 20% each upon satisfaction of their identity. No award is granted in favour of appellant no. 3(a) to 3(e).

The appeal is accordingly allowed. The impugned judgment of dismissal of the learned Tribunal is set aside. 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 lower court records be forwarded to learned Tribunal forthwith 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.)