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CT. No. 654
02.02.2023
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FMA 962 of 2019
IA NO. 3/2020
With
COT 2 of 2020

Bajaj Allianz Gen. Insurance Co. Ltd.

Versus

Mejhren Rebhan @ Tirkey & Ors.

Mr. Rajesh Singh
....for the appellant

Mr. Subhankar Mondal
...for the respondents

This appeal is directed against judgment and award dated 19th June, 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 5th Court, Barasat, 24 Parganas (North) in M.A.C Case No. 63 of 2014 granting compensation of Rs. 31,85,214/- together with interest .

The brief fact of case is that on 13th January, 2014 at about 22.00 hrs. while the victim was proceeding in a bi-cycle and when he reached near workshop gate, Kanchrapara at that time the offending vehicle bearing registration no. WB-24-TC-0129 (Motorcycle) which was proceeding in high speed and in rash and negligent manner dashed the bi-cycle of the victim, as a result of which the victim sustained severe injuries on person. The victim was immediately taken to Kalyani J.N.M Hospital where he was declared dead by the attending doctor. On account of sudden demise of victim, the claimants being the widow, son and daughter of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 30,39,835/- together with interest.

The claimants in order to prove their case examined three witnesses and produced documents which has been marked as **Exhibits 1 to 15/1** respectively.

The appellant-Insurance Company also adduced evidence of two witnesses and produced documents which has been marked **Exhibits A & B** respectively.

Upon considering the materials on record and the evidence produced on behalf of the respective parties, the learned tribunal granted compensation in favour of the claimants to the tune of Rs. Rs. 31,85,214/- together with interest. The learned Tribunal also granted liberty to the Insurance Company to recover the entire decreetal amount from the owner of the vehicle namely Sushila Bedbanshi in accordance with law.

Being aggrieved by and dissatisfied with the impugned judgment and award the Insurance Company has preferred the present appeal.

The respondents-claimants also filed a cross-objection being COT 2 of 2020 for enhancement of the compensation amount.

Mr. Rajesh Singh, learned advocate for the appellant-Insurance Company submits that since the learned tribunal have come to the finding that the driver of the offending vehicle on the relevant date was not holding valid and effective driving licence hence the Insurance Company cannot be saddled with the liability to pay compensation amount. He further submits that the learned tribunal cannot direct the Insurance Company to pay and recover in the event it finds that there is breach of condition of policy of insurance as per Section 149 (2) of the Motor Vehicles Act. In the view of his aforesaid submissions, he prays for setting aside for impugned judgment and award.

Mr. Subhankar Mandal, learned advocate for respondents-claimants submits that as per settled position of law laid down by the Hon'ble Supreme Court the learned Tribunal has rightly passed the order applying the principles of pay and recovery which should be affirmed in the interest of justice.

He further submits that since at the time of accident the victim was 54 years of age and was in permanent employment an additional amount equaling to 15% of the annual income of the deceased should be granted towards future prospect instead of 10%. In view of his aforesaid submissions, he prays for enhancement of the compensation amount.

Despite service of notice, none appears on behalf of the respondent no. 4 owner of the offending vehicle.

Both the appeal and the cross-objection are taken up together for consideration.

Having heard the learned advocates for respective parties, it is found that the appellant-Insurance Company has precisely challenged the judgment and award of the learned Tribunal on the ground that since the driver was not having valid and effective driving licence to drive such vehicle on the relevant date, hence, the learned tribunal ought not to have applied the principle of pay of recovery.

With regard to the aforesaid issue, it is found from the impugned judgment that the learned tribunal has observed that the motor-cycle was driven by a person not having effective and valid driving licence which was within the knowledge of the owner of the vehicle and accordingly proceeded to direct the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle in accordance with law. Now it is to be seen whether the learned tribunal was justified in passing such direction. At this stage it would be proficient to refer the decision of Hon'ble Supreme Court passed in ***National Insurance Co. Ltd versus Swaran Singh and Others*** reported in ***(2004) 3 SCC 297*** wherein it held that where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), the tribunal can direct that the insurer is liable to be re-imbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Thus, it goes without saying that the direction for pay and recovery passed by the learned tribunal does not call for interference in view of proposition laid down by Hon'ble Supreme Court as above. Accordingly, the direction given by the learned tribunal directing the Insurance Company to make payment and thereafter recover the compensation amount from the owner in accordance with law is affirmed. Thus, the ground of appeal taken by the Insurance Company does not hold good.

In the cross objection the claimants have taken the ground that the learned Tribunal granted future prospect of 10% on annual income of deceased instead of 15%. It is found from the impugned judgment that the deceased was a permanent employee of Railway Department (Eastern Railway), Government of India, Kanchrapara and he was aged 54 years 11 months and 25 days. In view of the decision of the Hon'ble, Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** the amount towards future prospect should be 15% of the annual income of the deceased instead of 10%.

The other factors and findings of the learned Tribunal has not been challenged in the appeal. The calculation of compensation is made hereunder.

Calculation of compensation

Annual Income (Rs.4,10,808/- less Rs.21,081/-)Rs.3,89,727/-
Add: Future Prospects @ 15% of total Income..Rs.58,459/-
Annual loss of Income................................Rs.4,48,186/-
Less: Deduction 1/3rd of the Annual Income
towards personal and living expenses........... Rs.1,49,395/-
Rs.2,98,791/-
Adopting multiplier 11 (Rs.2,98,791/- X 11).Rs.32,86,701/-
Add: General Damages...........................Rs.70,000/-
Loss of estate....Rs.15,000/-
Loss of Consortium....Rs.40,000/-
Funeral Expenses.......Rs.15,000/-
Add: 10% Increase on general damages.....Rs.7,000/-
Total Compensation................................**Rs.33,63,701/-**

Thus, the claimants are entitled to compensation of Rs. 33,63,701/- along with interest @ 6% per annum from the date of filing of the claim application till deposit. It found that the Insurance Company has deposited statutory amount of Rs. 25,000/- vide OD Challan no. 3009 of 11.03.2019 and also deposited an amount of Rs. 41,79,143/- vide OD Challan no. 876 of 19.07.2019 in terms of order dated 2.7.2019. Both the aforesaid deposits along with accrued interest on deposited amount shall be adjusted against the entire compensation amount.

The learned tribunal calculated the compensation amount of Rs.31,85,214/-.Accordingly, the Insurance

Company is directed to deposit the balance amount of Rs. 1,78,490/- together with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Appellate Side, Calcutta within a period of six weeks from date.

Respondents-claimants shall deposit *ad valorem* Court fees on the compensation amount, if not already paid.

Learned Registrar General upon deposit of the balance amount as indicated above and the interest, shall release the compensation amount in favour of the claimants in the same proportion as indicated by the learned tribunal, after making payment of Rs. 40,000/- towards spousal consortium in favour of respondent no. 1, and payment of *ad valorem* Court fees, if not already paid and upon the satisfaction of their identity.

With the aforesaid observation the appeal and the cross-objection stands disposed of. The impugned judgment and award of the learned tribunal is modified to extent above. No order as to cost.

All connected applications, if any, stand disposed of. Interim order, if any, stands vacated.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Bivas Pattanayak, J.)