04.07.2023
Ct. no.654
Item no.22
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 574 of 2021

Bijuli Mejhan & Ors.
Vs.
The Oriental Insurance Co. Ltd. Ors.

Mr. Amit Ranjan Roy
Ms. Afrin Nahar
…for the appellants-claimants

Ms. Gopa Das Mukherjee
..for the respdt.no.1-insurance Co.

This appeal is preferred against the judgment and award dated 20th January, 2020 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol, Paschim Bardhaman in MAC case no.25 of 2016 (52 of 2016) granting compensation of Rs 13,32,213/- together with interest in favour of claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 30th July, 2014 at about 4 p.m. while the victim was standing besides N.S.B. Road, Raniganj near Ankur Nursing Home in order to cross the road at that time the offending vehicle bearing registration no. WB-38/AC-6847 (motor cycle) in a rash and negligent manner dashed the victim, as a result of which the victim fell down on the road and sustained serious injuries all over his body. Immediately, the local people admitted the victim to Kunustoria Area Hospital for treatment. As the condition of the victim deteriorated he was referred to Central Hospital, Kalla, for treatment where the attending doctor declared him as brought dead. On account of sudden demise of the deceased, the widow, sons and daughter of the deceased filed application for compensation of Rs. 26,00,000/- 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 **Exhibits 1** to **9** (series) respectively.

The appellant-insurance Company did not adduce any evidence.

By an order dated 27th March, 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 by the claimants, the learned Tribunal granted compensation of Rs.13,32,213/- together with interest in favour 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.

Mr. Amit Ranjan Roy, learned advocate for the appellants-claimants submits that the learned Tribunal erred in adopting the multiplier of 8 instead of 9. He further submits that since the number of dependents is 6, the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd considered by the learned Tribunal in view of the decision of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298***. Moreover, he submits that since at the time of accident the victim was 59 years of age and was in permanent employment, in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimants are entitled to an amount equivalent to 15% of the annual income of the deceased towards future prospects instead of 10% granted by the learned Tribunal. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to his aforesaid submissions, Ms. Gopa Das Mukherjee, learned advocate for the respondent no.1-insurance company referring to the pay slip of the deceased (**Exhibit-9-series**) submits that since the net salary of the victim fluctuated from month to month, hence, he was not on permanent employment with Eastern Coalfield Limited. She further submits that in his cross-examination PW-1, son of the deceased, has deposed that his father did not have duty on each day and there was no fixed salary and frequently absented from his duty which clearly indicates that the job of the victim was temporary in nature. In view of the aforesaid materials, she submits that the learned Tribunal rightly allowed 10% of the annual income of the deceased towards future prospect, which should not be interfered with.

Having heard the learned advocates for the respective parties, the following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in adopting multiplier of 8 instead of 9. *Secondly*, whether the deduction towards personal and living expenses should be 1/4th instead of 1/3rd adopted by the learned Tribunal and *lastly,* whether the claimants are entitled to future prospect of 15% of the annual income of the deceased instead of 10%.

With regard to the first issue relating to multiplier, it is found that the learned Tribunal has adopted multiplier of 8. However, since at the time of accident, admittedly, the victim was 59 years of age, bearing in mind the observations of the Hon'ble

Supreme Court in *Sarla Verma (supra),* the multiplier to be adopted in the present case should be 9 instead of 8 adopted by the learned Tribunal.

With regard to the second issue relating to deduction towards personal and living expenses of the victim, it is found that the learned Tribunal has deducted $1/3^{rd}$ of the annual income of the deceased towards his personal and living expenses. However, following observations of the Hon'ble Supreme Court in *Sarla Verma (supra)* since the number of dependants is 6, the deduction towards personal and living expenses should be $1/4^{th}$ instead of $1/3^{rd}$.

Coming to the last issue relating to future prospect, it is found that at the time of accident the victim was 59 years of age. Form "B" issued by the Eastern Coalfield Limited in respect of the victim Sona Majhi (**Exhibit-8**) proved by PW3 Dinabandhu Mondal, Assistant Manager (Personnel) containing service records of the victim reveal that he was a permanent employee of Eastern Coalfield Limited. In view of the above materials, the arguments advanced on behalf of the insurance company that since there was fluctuation in the net salary of the victim from month by month or that the son of the victim deposed his father did not attend his duty regularly, hence, he was a temporary employee, does not stand reason. Keeping in mind the age of the victim and his permanent employment with Eastern Coalfield Limited, following the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to an amount equivalent to 15% of the annual income of the deceased towards future prospect.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Annual Income	Rs.2,15,150/-
Less: 1/4th towards personal and living expenses	Rs.53,787/-
Total income	Rs.1,61,363/-
Add: 15% of total income towards future prospect	Rs. 24,204/-
	Rs.1,85,567/-
Multiplier 9 (Rs.1,85,567/- x 9)	Rs.16,70,103/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total amount	Rs.17,40,103/-

Thus, the claimants are entitled to compensation of Rs.17,40,103/- together with interest @ 6% per annum from the date of filing of the claim application (07.04.2015) till payment. It is informed that the claimants have already received an amount of Rs.13,32,213/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.4,07,890/- together with interest @ 6% per annum from the date of filing of the claim application (07.04.2015) till payment.

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

Appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit the balance amount and the interest, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellants-claimants in equal proportion upon payment of *ad valorem* court fees, if not already paid, and on satisfaction of their identity.

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.

Let a copy of this order along with lower court records be sent to the learned Tribunal forthwith in accordance with rules.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)