IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT (MV) 153 OF 2022

Nilima Dutta (Mukherjee) & Ors.
Versus
M/s. United India Insurance Co. Ltd. & Ors.

For the appellants	:	Ms. Sima Ghosh, Adv.
For the Respondent	:	Ms. Jaita Ghosh, Adv.
Heard on	:	23.06.2023
Judgment on	:	30.06.2023

Ajay Kumar Gupta, J:

1. The appellants have filed this appeal being aggrieved and dissatisfied with the judgment and award dated 23rd November, 2021 passed by the MAC Tribunal, 3rd Court, Berhampore, Murshidabad in M.V. Case No. 115 of 2018 filed under Section 166 of the Motor Vehicles Act, 1988, thereby the Tribunal awarded compensation to the tune of Rs. 8, 52,800/- in favour of appellants/petitioners.

2. The fact leading to filing of the case is that on 20.01.2018 at about 5.25 a.m. the victim, namely, Taraknath Dutta was travelling from Amtala towards Beldanga by bus being Registration No. WB/57/9540. The said bus was suddenly lost control and capsized in Nayanjali due to rash and negligent driving by the driver. As a result, the victim sustained severe injuries on his person and succumbed to death. The Motor Accident Claims Tribunal awarded less compensation in favour of the Appellants/Claimants. Hence, this appeal preferred by them.

3. The appellants prayed for enhancement of quantum of compensation only on two grounds, i.e., the Tribunal has not allowed any compensation towards specific head 'future prospect' and less amount awarded under the head of general damages. As such, the

quantum of compensation is required to be assessed on the heads of future prospect and general damages.

4. Learned advocate appearing on behalf of the appellants, at the very outset, submitted that the matter can be disposed of only on the basis of memo of appeal and certified copy of impugned judgment and award dated 23rd November, 2021. He prays for dispensing with call for lower court records and preparation of paper book as the matter is very simple. It can be decided on the basis of proposition laid down by the Apex Court. Learned Advocate relied a judgment of larger Bench of the Supreme Court reported in (2017) 16 SCC 680 (National Insurance Company Limited vs. Pranay Setty and Anr.) to support his contention that the General damages should have Rs. 70,000/- in place of Rs. 9,000/-. Apart from that, the Tribunal had not considered the future prospect of the victim whose earning was proved as Rs. 8,200/- per month from his service and his age was 45 years at the time of his death. Therefore, learned Tribunal ought to have added 25% in case of self-employed or on a fixed salary where the deceased between age of 40 to 50 years. That addition was not allowed by the Tribunal. Therefore, the appellants filed this appeal for enhancement of compensation only on those two heads. Appellants have no other grievances in this appeal. There are no disputes

regarding other quantum of compensation awarded on other heads or multiplier or deduction. Therefore, learned advocate prays for only addition of 25% towards future prospect on the total annual income and Rs. 70,000/- as general damages in place of 9,000/-.

5. On the other hand, learned advocate appearing on behalf of the respondent no. 1/Insurance Company also candidly submitted that matter can be disposed of on the basis of judgment and award dated 23rd November, 2021. There is no need to call for lower court record and preparation of paper book.

6. Heard learned counsels appearing on behalf of either party. Preparation of paper book and calling of Lower Court Records from Tribunal is dispensed with.

7. The issues raised by Appellant's side are very simple. Firstly, whether amount under the head 'general damages' can be enhanced from 9,000/- to 70,000/- and future prospect can be added @ 25% on self-employed or on a fixed salary of the deceased, where the deceased's age was between 40 to 50 years.

8. It is undisputed about the actual income of the victim at the time of accident, age and accident, which was took place due to negligent driving of the driver. It is also not disputed about the deduction on loss of income of the victim towards his personal and living expenses if he would have alive.

9. Consequently, disputes are only regarding future prospect of the victim and actual compensation towards general damages in a case where death occurred due to motor traffic accident. The other findings and factors decided by the learned Tribunal have not been raised by the learned Advocate in the appeal. This Court, therefore, keeps on these two issues for consideration. The Apex Court in a case **National Insurance Co. Ltd Vs. Pranay Sethi**[1], specifically held that reasonable figures on conventional heads, namely, Loss of estate, Loss of consortium and funeral expenses should be Rs. 15,000/=, Rs. 40,000/= and Rs. 15,000/= respectively. I find substance in the submissions of learned advocate for appellants/claimants in this regard. Consequently, appellants are entitled to get those figures in the head mentioned above in place of Rs. 2000/= (as loss of estate), Rs. 5000/= (as consortium) and Rs. 2000/= (as funeral expenses).

---
[1] (2017) 16 SCC 680

Therefore, Rs.70, 000/= may be safely accepted as General damages as claimed by the appellants.

10. With regard to another issue raised by the appellants pertaining to entitlement of future prospect, it is found that the learned Tribunal did not grant any amount on this head. In this regard, the Hon'ble Supreme Court in the aforesaid **Pranay Sethi's case (supra)** has also laid down the proposition towards future prospect and method of calculation, *inter alia*, as follows:

> *"In case the deceased was self-employed or on a fixed Salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The Established income means the income minus the tax component".*

11. In the light of above discussion and proposition laid down by the Apex Court, appellants are also entitled to get an additional amount of 25% of the annual income of the deceased, who was

between the ages of 40 to 50 years towards future prospect in addition to General damages as aforesaid. This Court does not touch the findings of the Tribunal with regard to actual income of deceased, which was taken as Rs. 8,200/- per month, age was taken as 45 years at the time of his death and multiplier as 13 considering the age group of the victim because those findings are not raised by the parties before this Court. Indeed, it was taken on the basis of evidence and well reasons.

12. Keeping in mind the above observation, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 8, 200/-
Annual Income (Rs. 8200/- X 12)	Rs. 98, 400/-
Add: Future prospect @ 25% of the income of victim	Rs. 24, 600/-
Total Income	Rs. 1, 23, 000/-
Less: deduction 1/3rd of the total Annual income	Rs. 41, 000/-

(towards personal and living expenses)	
Total income after deduction	Rs. 82, 000/-
Total loss of Dependency Rs. 82, 000/- X 13 (Multiplier)	Rs. 10, 66,000/-
Add: Loss of estate	Rs. 15, 000/-
Add: Funereal Expenses	Rs. 15, 000/-
Add: Loss of consortium	Rs. 40, 000/-
Total compensation	**Rs. 11, 36,000/-**

13. Thus, the appellants/claimants are entitled to get enhanced compensation amount comes to Rs. 2, 83,200/= (Rs. 11, 36,000/- minus Rs. 8, 52, 800/-) which shall carry interest of 6% per annum from the date of filing of the claim application i.e. from 12.04.2018 till payment.

14. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2,83,200/= and the interest as indicated above by way of cheque before the learned

Registrar General, High Court Calcutta within a period of eight weeks from date.

15. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellants /claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in equal share.

16. The Appellant No. 1, Nilima Dutta (Mukherjee) being mother and natural Guardian shall deposit the amount awarded in favour of minor Appellant No. 4, Taraknath Dutta in any nationalised Bank or in Post Office in a fixed deposit scheme till attaining his majority.

17. With the above observations, the instant appeal stands disposed of.

18. The impugned judgment and award of the learned Tribunal dated 23rd November, 2021 is modified to the above extent. No order as to costs.

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

20. Let copy of this judgment and order along with lower court records, if received, be forwarded to the learned Tribunal for information.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)