IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

03.02.2023
SL No.6
Court No. 654
Ali

F.M.A. 727 of 2022
IA No:CAN/2/2022

National Insurance Co. Ltd.
Vs.
Jayanti Maiti Rauth @ Jayanti Maity Rauth & Ors.

Ms. Sucharita Paul
...for the appellant-Insurance Co.

Mr. Jayanta Kumar Mandal
...for the respondents-claimants.

This appeal is preferred against the judgment and award dated 14th December, 2021 passed by learned Judge, Motor Accident Claims Tribunal, 1st court, Tamluk, Purba Medinipur in M.A.C Case no. 527 of 2016 granting compensation of Rs. 25,06,296/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 24 August 2016 at about 8:30 PM while the victim was standing on extreme left of footpath of Brajalalchak-Chaitanyapur pitch road near Chaklalpur Bus Stoppage at that time the offending vehicle bearing registration no. WB-29/4666 (mini-truck) coming with excessive high-speed dashed the victim with great force, as a result of which the victim sustained injuries all over his body and head. Immediately, the victim was taken to Haldia S.D. Hospital, Basudevpur, Haldia and thereafter he was shifted to Indus Nursing Home, at Andul Road, Howrah on 25.8.2016. The victim was under treatment at different hospitals till he succumbed to his injuries on 21.10.2016 at Barrackpore Medicare & Recovery Centre Ltd. On account of sudden demise of the victim, the claimants being the widow, minor daughter and mother of the deceased filed application for compensation of Rs.20,00,000/- together with interest under Section 166 of Motor Vehicles Act, 1988.

The claimants in order to establish their case examined five witnesses and produced documents which has been marked **Exhibits 1 to 22** respectively.

The appellant- insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs. 25,06,296/- 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 insurance company has preferred the present appeal.

Mrs Sucharita Paul, learned advocate for insurance company submits that the learned tribunal erred in determining the income of the deceased on the basis of salary for the month of June 2016 whereas it ought to have considered that the deceased was working in *Haldia Logistic Private Limited* company on no work no pay basis which is evident from the oral evidence of PW5 as well as the salary slips. She submits that as per the salary slips the income of the deceased-victim varied from month to month since his income depended on the number of days, he attended his job and therefore the practicable approach for determination of annual income of the deceased-victim should be total income of twelve months, prior to death, less professional tax paid. Moreover the general damages should be awarded as per decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700.*** In light of her aforesaid submissions, she prays for modification of the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr Jayanta Kumar Mandal, learned advocate for respondents-claimants submits that since the salary for the month of June 2016 is based on the maximum days attended by the deceased, such income should be taken into account for computation of just compensation as has been rightly considered by the learned tribunal. In view of his aforesaid submissions, he prays that the award passed by the learned tribunal should be affirmed and the appeal be dismissed.

By order dated 17 August 2022 the service of notice of appeal upon respondent no.4-owner of the offending vehicle has been dispensed with.

Having heard the learned advocates for the respective parties, it is found that the appellant insurance company has thrown challenge to the award of the learned tribunal on the following ground *firstly,* learned tribunal made erroneous determination of income of the deceased and *secondly,* the general damages should be Rs.70,000/-.

With regard to the aforesaid issue raised in the appeal, it is found that the learned tribunal considered the salary of Rs. 13,332/- of the deceased for the month of June 2016. The claimants in order to establish the income of the deceased examined one Sital Das as PW5 who produced salary slips of the deceased-the victim marked **Exhibit 22 (collectively)**. PW5, deposed that the deceased was an assistant welder in *Haldia Logistic Private Limited* and was employed on *no-work-no* pay basis. From the salary slips it manifest that the deceased used to be paid by the company on the basis of number of days attended by him. Further the salary slips shows that the income of the deceased fluctuated from month to month. In order to determine the annual income of the deceased it will be prudent and practicable to compute such income of the deceased-victim by taking the monthly income of last twelve months prior to the accident on August, 2016. Thus, the income of the deceased from August 2015 to July 2016 comes to Rs.1,50,738. The salary slips shows that an amount of Rs.1320/-has been paid towards professional tax. Therefore, the income of the deceased should be the total income less the tax component which comes to Rs. 1,49,418/-.

With regard to general damages, in view of the above decision in ***Pranay Sethi's case (supra)*** the claimants are also entitled to general damages under the conventional heads of loss of estate of Rs.15,000/-, loss of consortium of Rs.40,000/- and funeral expenses of Rs.15,000/-

The other factors and findings of the learned tribunal has not been challenged in the appeal.

Accordingly, the calculation of compensation is made hereunder.

Calculation of compensation

Annual Incom..(Rs.1,50,738/-less 1,320/-)
.......Rs. 1,49,418/-

Add: 40% of total Income

towards future prospect……………….Rs.59,767/-(approx)
Annual loss of Income……………….Rs.2,09,185/-
Less: Deduction 1/3rd of the Annual
Income towards personal
and living expenses…………Rs.69,728/-(approx.)
Rs.1,39,457/-
Adopting multiplier 16
(Rs.1,39,457/- X 16)………………Rs.22,31,312/-
Add: General Damages………………………Rs.70,000/-
Loss of estate….Rs.15,000/-
Loss of Consortium….Rs.40,000/-
Funeral Expenses…….Rs.15,000/-
Add: Medical Expenses…… ………………….Rs.64,000/-
Total Compensation………………………Rs.23,65,312/-

Thus, the claimants are entitled to compensation of Rs. 23,65,312/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit. It is found that the appellant-insurance company has deposited statutory amount of Rs. 25,000/- vide OD no. 246 dated 22.4.2022 and an amount of Rs. 25,06,296/- vide OD challan no.1516 dated 16.8.2022 in terms of order dated 27.4.2022 with Registry of this Court. Both the aforesaid deposits along with accrued interest be adjusted against the entire compensation amount and the interest therein.

Appellant- insurance company is directed to deposit the balance amount of compensation, if any, together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 29.11.2016) till deposit, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Upon deposit of the balance amount of compensation, if any, and the interest as indicated, the learned Registrar General, High Court, Calcutta shall release the amount of compensation in favour of respondents-claimants, after making payment of Rs.40,000/-to respondent no.1 (widow of the deceased) towards spousal consortium, in equal proportions upon satisfaction of their identity and on payment of *ad valorem* court fees on the compensation assessed, if not already paid.

Respondent no.1, being the mother and natural guardian of minor respondent no.2, shall receive the share of the minor and shall keep the same in a fixed deposit scheme of any nationalized bank or Post office till attainment of majority by the said minor.

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

All connected applications if any stands disposed of.

Interim order if any stands vacated.

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

(Bivas Pattanayak, J.)