25.07.2023
Ct. 654
D/L 7 & 8
ab/kb

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 3760 of 2016
With
CAN 2 of 2017 (Old No. CAN 6244 of 2017)
With
CAN 3 of 2019 (Old No. CAN 2577 of 2019)

National Insurance Co. Ltd.
Vs
Renuka Midya & Ors.
With
COT 77 of 2018

Renuka Midya & Ors.
-VS-
National Insurance Co. Ltd.

Mr. Afroze Alam
… for the appellant-insurance company

Mr. Jayanta Kumar Mandal,
Mr. S. Rakshit
… for the respondents-claimants

Affidavit of service filed by the appellant-insurance company is taken on record.

This appeal is preferred against the judgment and award dated 14th December, 2015 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in MAC Case No. 62 of 2013 (Old No. 330 of 2012) granting compensation of Rs. 20,82,000/- 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 4th June, 2012 at about 3 p.m. while the victim was proceeding on a motorcycle towards Mecheda market on NH-41 from Kolaghat Mecheda Check Post at that time the offending vehicle bearing registration no. WB-30C/9305 (Tata Indica) coming in same direction in a rash and negligent manner dashed the victim with great force near MCI Factory under Kolaghat P.S., as a result of which, the victim sustained grievous injuries on his head and all over the body. Immediately, the local people shifted the victim to RRB Memorial Hospital at Tamluk wherefrom he was transferred to Indus Nursing Home at Howrah on the same day. The victim was transferred to Institute of Neuro Science at Kolkata on the subsequent date. Ultimately, on 9th June, 2012 at about 8.45 a.m. the victim succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow and two sons filed application for compensation of Rs. 20,02,088/- 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 **8 (series)** respectively.

The appellant-insurance company did not adduce any evidence.

Since the claim case was disposed of ex parte against the owner of the offending vehicle, hence service of notice of appeal upon the respondent no. 4, owner of the offending vehicle stands dispensed with.

During the pendency of the appeal, the respondent no. 3, Pralay Midya expired and by order dated 13th July, 2023 passed in CAN 4 of 2022, the name of the aforesaid respondent has been expunged from the memorandum of appeal as well as cross objection.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 20,82,000/- 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, the insurance company has preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have preferred a cross objection being COT 77 of 2018.

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

Mr. Afroze Alam, learned advocate for the appellant-insurance company submits that though the learned Tribunal doubted the involvement of the alleged vehicle, yet it proceeded to decide such issue in favour of the claimants on the ground that the insurance company did not adduce any evidence of non-involvement of the vehicle, which is an erroneous finding and is not sustainable in the facts and circumstances of the case. The materials on record would clearly indicate that the offending vehicle was not involved in the accident. He further submits that as per the service record, the victim was more than 50 years of age at the time of accident and as such, the multiplier to be applied should be 11 instead of 13 adopted by the learned Tribunal. Moreover, the rate of interest on the compensation amount should be scaled down from 7% per annum to 6% per annum bearing in mind the prevailing rate of banking interest. In the light of the aforesaid submissions, he prays for allowing the appeal of the insurance company.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Jayanta Kumar Mandal, learned advocate for the respondents-claimants submits that as per oral evidence of the eyewitness supported by documentary evidence in the form of charge-sheet and seizure list, the involvement of the offending vehicle has been clearly established by the claimants. Referring to a decision of the Hon'ble Supreme Court in ***Shashikala & Ors. versus Gangalakshmamma & Anr***. reported in ***2015 SAR***

(Civil) 560, he submits that since the victim did not complete the age of 51 years, hence the multiplier relevant to age of 50 years should be adopted and, therefore, the multiplier of 13 applied by the learned Tribunal is correct and should be affirmed. He further submits that the claimants are entitled to an amount equivalent to 15 % of the annual income of the deceased towards future prospect and general damages under the conventional heads of Rs. 70,000/- with escalation of 10% in view of the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700.*** In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the offending vehicle was involved in the accident, *secondly*, whether the multiplier should be 11 instead of 13 adopted by the learned Tribunal; *thirdly*, whether the claimants are entitled to an amount equivalent to 15% of the annual income of the deceased towards future prospect; *fourthly*, whether the claimants are entitled to general damages under the conventional heads of Rs. 70,000/- and *lastly*, whether the rate of interest on the compensation amount should be scaled down to 6% per annum.

With regard to the first issue relating to involvement of the vehicle, it is found that the Insurance Company in its written statement has denied the involvement of the offending vehicle. At the outset, it is pertinent to note that no evidence has been led by the Insurance Company challenging the involvement of the offending vehicle. The claimants in order to establish the involvement of the vehicle as examined one Tapas Samanta as P.W.2 who deposed that he saw the accident in which the offending vehicle dashed the motor cycle on which the victim was proceeding on the relevant date of accident. The evidence of involvement of the offending vehicle stated by the aforesaid witness has remained unchallenged in cross-examination. The presence of the witness near the scene of occurrence is also established in cross-examination wherein he stated that at the time of the incident he was waiting near the place for boarding a vehicle to return back. Moreover, the evidence of involvement as stated by the eyewitness P.W.2 gets corroboration upon filing of the charge sheet **(Exhibit-2)** and seizure list **(Exhibit-3)** showing involvement and seizure of the offending vehicle. There is no contrary evidence against the evidence of involvement of the offending vehicle adduced by the claimants. The aforesaid evidence adduced on behalf of the claimants in support of involvement of the vehicle cannot be disbelieved in the absence of contrary evidence. Such being the position, it is found that the claimants have succeeded in establishing the aspect of involvement of the offending vehicle in the accident on the relevant date. For the aforesaid reason, the arguments advanced on behalf of the Insurance Company in this regard fall short of merit.

With regard to the second issue relating to multiplier, it is found that the Learned Tribunal has adopted multiplier of 13. Mr. Alam, learned Advocate for the appellant-Insurance Company has argued that since the victim is more than 50 years of age, hence, the multiplier should be 11. *Per contra,* Mr. Mandal, learned Advocate for the respondents-claimants placing reliance on *Sashikala (supra)* argued that since the victim did not complete 51 years of age hence the multiplier of 13 relevant to 50 years of age should be adopted. It is found from the certificate dated 21st May, 2015 issued by the employer of the victim **(Exhibit-7)** that the Date of Birth of the deceased is 22nd November, 1961. The accident having taken place on 4th June, 2012 the victim was aged 50 years and 7 months. Thus the victim did not complete 51 years of age on the date of accident. Following the proposition in *Sashikala (supra),* the multiplier relevant to a person of 50 years of age should be applicable. In view of decision of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***2009 ACJ 1298*** the multiplier would be 13 as has been rightly adopted by the learned Tribunal.

With regard to the third issue pertaining to future prospect, it is found that the victim at the time of accident was aged 50 years and 7 months and was on permanent employment. Therefore, following the proposition of the Hon'ble Supreme Court in *Pranay Sethi (supra)* the claimants are entitled to an amount equivalent to 15% of annual income of the deceased towards future prospect.

Further in view of decision in *Pranay Sethi (supra)*, the claimants are also entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

Further the claimants are also entitled to escalation on the amount of general damages since three years have elapsed.

Coming to the last issue relating to interest on compensation amount Mr. Alam has argued that the prevalent rate of banking interest of 6% per annum should be applicable in the present case instead of 7% adopted by the Learned Tribunal. Considering the prevailing rate of banking interest, the compensation amount should carry interest of 6% per annum.

Other facts have not been challenged in this appeal.

Bearing in mind the aforesaid, the calculation is made hereunder:

<u>Calculation of Computation</u>

Monthly Income	Rs.20,000/-
Yearly Income (Rs.20,000/- x 12)	Rs.2,40,000/-
Add: 15% of the yearly income towards Future Prospect	Rs.36,000/-
	Rs.2,76,000/-
Less: 1/3rd towards personal and living expenses	Rs.92,000/-
	Rs.1,84,000/-
Multiplier 13 (Rs.1,84,000/- x 13)	Rs.23,92,000/-
Add: General Damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs. 70,000/
Add: 10% escalation on general damages	Rs.7,000/-
Total amount	Rs.24,69,000/-

Thus the respondent nos.1 & 2 (claimants) are entitled to compensation of Rs.24,69,000/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

The appellant-insurance company is directed to deposit the aforesaid amount of compensation together with interest as indicated above by way of cheque before the learned Registrar, High Court, Calcutta within a period of six weeks from date.

Respondent nos.1 & 2 are directed to deposit *ad valorem* Court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount of compensation and interest as indicated above learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the respondent nos. 1 & 2, after making payment of Rs. 40,000/- to respondent no. 1, widow of the deceased, towards spousal consortium, in the proportion that 80% of the remaining amount shall be released in favour of the respondent no.1 and 20% in favour of the respondent no.2, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

It is found that the Insurance Company has deposited statutory amount of Rs.25,000/- before the Registry of this Court *vide* O.D Challan no. 3277 dated 29th March, 2016. The aforesaid amount together with accrued interest be refunded to the insurance company.

With the aforesaid observations, the appeal and cross-objection stand 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 the Lower Court Records be sent to the Learned Tribunal in accordance with the rules.

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

(**Bivas Pattanayak, J**.)