IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

23.02.2023
SL No.11
Court No. 654
Ali

F.M.A. 2706 of 2016

Smt. Keshri Nahako & Ors.

Versus

The National Insurance Company Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellants-claimants.

Mr. Deb Narayan Roy
...for the respondent No. 1-Insurance Co.

This appeal is preferred against the judgment and award dated 4th January, 2016 passed by the learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Asansol, Paschim Bardhaman in M.A.C. Case no. 33 of 2012 (Old no. MAC 170 of 2010) granting compensation in favour of the claimants to the tune of Rs. 14,24,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 11th September, 2010 at about 5:30 PM while the victim and other persons were getting ready for going somewhere from Ranisayer more on Burnpur-Neamatpur road, at that time the offending vehicle bearing registration no. WB-37B/1611 (Bolero Pick-up Van) which was proceeding from Neamatpur side dashed the victim and others in a rash and negligent manner as a result of which the victim alongwith other persons sustained severe injuries. Soon thereafter the local people shifted the victim and other injured persons to S.D. Hospital, Asansol for treatment but the attending doctor declared the victim and three others as dead. On account of sudden demise of the deceased, the petitioners being the widow, daughter and two sons filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 23,00,000/-together with interest.

The claimants in order to establish their case examined four witnesses and produced number of documents which has been marked as **Exhibits 1 to 11** respectively.

The respondent no.1-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. 14,24,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988 in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for appellants-claimants submits that the learned tribunal erred in determining income of the deceased by taking net average income whereas it ought to have taken the gross income less tax paid. He further submits that the claimants are also entitled to an additional amount equalling to 25% of annual income of the deceased towards future prospect. Moreover, he submits that since at the time of accident the number of dependents of the deceased was four, hence the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd. In his usual fairness Mr Roy, learned advocate for appellants-claimants submits that the general damages granted by the learned tribunal to the extent of Rs.1,04,500/- is to be scaled down to Rs. 70,000/- and the multiplier should be 14 instead of 15 since at the time of accident the deceased was 44 years of age. In the aforesaid backdrop, he prays for enhancement of the compensation amount.

Mr Deb Narayan Roy, learned advocate for respondent no.1-insurance company opposing such prayer for enhancement submits that the learned tribunal has rightly determined the income of the deceased which does not call for interference.

By order dated 6th February, 2023 service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with.

Heaving heard the learned advocates for respective parties, it is found that the claimants have precisely raised three issues in the present appeal, *firstly* that the learned tribunal erred in determining the income of the deceased; *secondly,* the claimants are entitled to an additional amount equalling to 25% of annual income of the deceased towards future prospect and *lastly,* the deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/3^{rd}$.

With regard to determination of income, it is found that the learned tribunal has determined the income of the deceased at Rs. 11,000/- taking the monthly gross income less tax paid. Be that as it may, on taking the total gross pay for 12 months from October 2009 to September 2010, prior to the accident in the month of October 2010, the total gross income of the deceased comes to Rs.1,31,677/- and the total professional tax paid during such period is Rs. 1,163/-. Thus the total annual income is calculated to Rs.1,30,514/-.

So far as the amount towards future prospect is concerned, it is found that the victim at the time of accident was a UG loader attached to Eastern Coal Fields Ltd. and his Identity Card **Exhibit-6** shows that his date of appointment is on 08.05.1996. Be that as it may, the Pay Slip **(Exhibit 7-series)** shows that his income varied from month to month and thus the employment of the deceased was basically temporary in nature. Admittedly, the deceased at the time of accident was 44 years of age and therefore following the observation of Hon'ble Supreme court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** the claimants are entitled to an additional amount of 25% of the annual income of the deceased towards future prospect.

With regard to deduction towards personal and living expenses of the deceased, it is found from the claim application that the claimants are the widow, daughter and sons of the deceased and thus as there were four numbers of dependents of the deceased at the time of accident, hence following the observation of Hon'ble Supreme court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298*** the deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of 1/3.

It is found that the learned tribunal has granted general damages of Rs. 1,04,500/-. However following the observation of Hon'ble Supreme Court made in *Pranay Sethi's Case (supra)* the claimants are entitled to general damages under conventional heads namely loss of estate, loss of consortium and funeral expenses Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/-respectively.

In view of submissions made on behalf of appellants-claimants with regard to multiplier and not disputed by respondent no.1-insurance company, since the deceased was aged 44 years at the timeof accident hence the multiplier should be 14 instead of 15 adopted by learned tribunal.

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

In the aforesaid backdrop, the compensation award is calculated as follows:

Calculation of compensation

Annual Income
[Rs. 1,31,677/-less Rs.1,163/-(P.Tax)]...Rs.1,30,514/-
Add: 25% of annual Income
towards future prospect.......Rs.32,629/-(approx)

Annual loss of Income...........Rs.1,63,143/-(approx)
Less: Deduction 1/4th of the Annual Income
towards personal and living expenses..... Rs.40,786/-
Rs.1,22,357/-

Adopting multiplier 14
(Rs. 1,22,357/- X 14)......................Rs.17,12,998/-
Add: General Damages...................Rs.70,000/-
Loss of Estate............Rs.15,000/-
Loss of Consortium.....Rs.40,000
Funeral Expenses.......Rs.15,000/-
Total Compensation........................Rs.17,82,998/-

Thus, the total compensation comes to Rs. 17,82,998/-. It is informed that the claimants have already received the amount of compensation of Rs.14,24,500/-together with interest granted by the learned tribunal. Accordingly, appellants-claimants are entitled to balance amount of compensation of Rs. 3,58,498/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 9.12.2010) till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.3,58,498/-together with interest at the rate of 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, 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, if not already paid.

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

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

All connected application, if any, stands disposed of.

Interim orders, if any, stands disposed of.

Let a copy of this order alongwith lower court records be forwarded to the learned tribunal for information.

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

(Bivas Pattanayak, J.)