21.08.2023
Ct. no.654
Item no.11
sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 342 of 2022

United India Insurance Co. Limited
Vs.
Susmita Dhara Barman & Ors.

Mr. Rajesh Singh
...for the Appellant

Mr. Pingal Bhattacharyya
Ms. Poonam Keswani
Mr. Rajdeep Singha
..for the respondents

This appeal is preferred against the judgment and award dated 24th December, 2020 passed by the learned Judge, Motor Accident Claims Tribunals, 1st Court, Tamluk, Purba Medinipur in MAC case no.346 of 2015 granting compensation of Rs.99,64,352/- together with interest in favour of the respondent nos. 1, 2 & 3 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 12th April, 2015 at about 12-30 p.m. while the victim was returning to his home from Haldia through NH-41 by a motor cycle keeping the left side at that point of time the offending vehicle bearing registration no. WB-57B/2165 (Dumper) in a rash and negligent manner dashed the motor cycle of the victim near Kasthakhali Baro Pool, as a result of which the victim sustained grievous injuries on his head and died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor son and parents filed an application for compensation of Rs.1,00,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined four witnesses and produced documents which have been marked as **Exhibits 1** to **17** respectively.

Appellant-insurance Company also adduced evidence of one witness and produced documents which have been marked as **Exhibits A** & **B** respectively.

Since respondent no.5, owner of the offending vehicle, did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of respective parties, the learned Tribunal granted compensation of Rs.99,64,352/- together with interest in favour of the claimant nos. 1, 2 & 3 under Section 166 of the Motor Vehicles Act. However, no compensation was granted in favour of the claimant no.4, father of the deceased.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned

Tribunal, the insurance company has preferred the present appeal.

Lower court records have been received and upon examination found to be complete and in order.

With the consent of the parties, preparation of informal paper books is dispensed with.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that although the learned Tribunal has taken note of the fact that the father is not a dependant of the deceased and proceeded to allow compensation in favour of the widow, minor son and mother of the deceased, yet, it deducted $1/4^{th}$ of the annual income of the deceased towards personal and living expenses of the deceased instead of $1/3^{rd}$. Referring to the decision of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298***, he submits that since the number of dependant is 3, deduction towards personal and living expenses of the deceased should be $1/3^{rd}$ of his annual income instead of $1/4^{th}$. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award.

Mr. Pingal Bhattacharyya, learned advocate for the respondents-claimants leaves the matter to the discretion of the Court.

Mr. Bhattacharyya, learned advocate for the respondents-claimants informs the Court that the respondent no.4 namely Anil Barman @ Atul Chandra Barman, father of the deceased, has already expired and he submits for expunging the name of respondent no.4 from the Memorandum of Appeal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company does not raise any objection to the prayer for expunging the name of the respondent no.4, since such expunging has got no bearing so far as entitlement on compensation by the other respondents are concerned.

Having heard the learned advocates for the respective parties in this regard, the name of the respondent no.4 Anil Barman @ Atul Chandra Barman stands expunged.

The department concerned is directed to make necessary amendments/correction in the Memorandum of Appeal.

Having heard the learned advocates for the respective parties, the only issue that has fallen for consideration is whether the deduction towards personal and living expenses of the deceased should be $1/3^{rd}$ of the annual income instead of $1/4^{th}$.

It is found that the learned Tribunal has deducted $1/4^{th}$ towards personal and living expenses of the victim. It is trite law that deduction towards personal and living expenses of the deceased squarely depends on the number of dependants of the victim at the time of accident. Although, the learned Tribunal has held that the wife, minor son and mother of the victim are entitled to compensation and did not grant compensation in favour of the father of the deceased, yet, it deducted an amount equivalent to $1/4^{th}$ of the annual income of the victim towards his personal and living expenses which is applicable when the number of dependents of the victim is 4 to 6. The Hon'ble Supreme Court in the decision of *Sarla Verma (supra)* has observed that subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant. Save and except a solitary statement of PW-1, widow of the deceased, that the family was dependant on the income of the deceased, there are no positive evidence that the father of the victim was dependant on the income of his son (deceased). Thus, the materials on record clearly suggest that the victim had 3 dependants at the time of accident. Following observations of the Hon'ble Supreme Court in *Sarla Verma (supra)*, deduction towards personal and living expenses of the deceased should be $1/3^{rd}$ of his annual income instead of $1/4^{th}$ adopted by the learned Tribunal.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.48,861/-
Annual income (Rs.48,861/- x 12)	Rs.5,86,332/-
Add: 50% of the annual income towards future prospect	Rs.2,93,166/-
	Rs.8,79,498/-
Deduction: 1/3rd towards personal and living expenses	Rs.2,93,166/-
	Rs.5,86,332/-
Multiplier 15 (Rs.5,86,332/- x 15)	Rs.87,94,980/
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.88,64,980/-

Accordingly, the respondent nos. 1 to 3 (claimants) are entitled to compensation amount of Rs.88,64,980/- together with interest @ 6% per annum from the date of filing of the application till payment.

It is informed that the insurance company has already deposited a sum of Rs.1,41,62,484/- vide O.D. challan no.556 dated 20.05.2022 as well as an amount of Rs.25,000/- vide O.D. challan no.2261 dated 01.03.2022 before the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest on the said amount.

The learned Registrar General, High Court, Calcutta shall release the compensation amount together with interest in favour of the respondent nos. 1, 2 & 3 in equal proportion after making payment of Rs.40,000/- towards spousal consortium in favour of the respondent no.1, widow of the deceased, upon satisfaction of their identity.

The order of the learned Tribunal granting liberty to the insurance company to recover the compensation amount from the owner and driver of the offending vehicle is affirmed.

After full satisfaction of the award, if any amount is left over, the same shall be refunded to the insurance company.

The respondent no.1, mother and natural guardian of the minor respondent no.2 shall receive the share of the minor on her behalf and keep the same in a fixed deposit scheme by any nationalised bank or post office until attainment of majority of the said minor.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All the connected applications, if any, stands 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 Court below for information 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.)