08.09.2023
Ct. no.654
Item nos.197
& 198.
KB/SN

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

FMAT(MV) 625 of 2022
with
IA No. CAN 1 of 2023
with
IA No. CAN 3 of 2023
United India Insurance Co. Ltd.
Vs.
Musarrat Khatoon and others
with
FMAT(MV) 261 of 2023
with
IA No. CAN 1 of 2023
Musarrat Khatoon and others
Vs.
United India Insurance Co. Ltd. and others

Mrs. Sucharita Paul
…for the appellant-insurance company in FMAT(MV) 625 of 2022 and respondents in FMAT(MV) 261 of 2023

Mr. Ashique Mondal
..for the respondents-claimants in FMAT(MV) 625 of 2022 and appellants in FMAT(MV) 261 of 2023.

In Re: CAN 1 of 2023.

This is an application for condonation of delay in filing the appeal being FMAT (MV) No. 261 of 2023.

Mr. Ashique Mondal, learned advocate for the appellants [in FMAT(MV) 261 of 2023] submits that due to financial hardships and delay in obtaining the certified copy of the impugned judgment there has been delay of 23 days in preferring the appeal. He seeks for condonation of such delay.

Mrs. Sucharita Paul, learned advocate for respondent no.1-insurance company [in FMAT(MV) 261 of 2023] opposes such prayer.

As per report of the Additional Stamp Reporter dated 26th June, 2023 there is delay of 23 days in preferring the appeal.

It is contended that due to economical hardship appeal could not be preferred within the statutory period of limitation. The cause shown is sufficient to condone such delay.

Accordingly, the delay of 23 days in preferring the appeal stands condoned.

The application being **CAN 1 of 2023** stands disposed of.

The appeal is formally admitted and registered.

In Re: FMAT(MV) 625 of 2022 and
FMAT(MV) 261 of 2023

Both these appeals arise from judgment and award dated 15th September, 2022 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 5th Court, Alipore, 24 Parganas (South) in MAC case no.861 of 2018 granting compensation of Rs.31,22,750/- 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 3rd June, 2018 at about 6.15 hours while the victim was proceeding through NH-2 from Burdwan towards Durgapur driving a container bearing registration no. WB-19G-7807 at a moderate speed and when he reached near Sonar Bangla Hotel, Boro dighi at that relevant point of time the offending vehicle bearing registration no. WB-53B-8474 (dumper) in a rash and negligent manner dashed the container driven by the victim as a result of which the victim driver sustained to severe injuries. Immediately, the local people shifted the victim to Burdwan District Hospital where the attending doctor declared him dead. On account of sudden demise of the victim the claimants, being the widow, minor daughter and minor sons of the deceased filed application for compensation of Rs.45,10,000/- 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 **18** respectively.

The appellant-insurance Company adduced evidence of one witness and produced documents which have been marked as **Exhibits A** to **C** respectively.

The owners of both the vehicles (respondent nos. 5 and 6) did not contest the claim application and the case was disposed of *ex parte* against both of them. Further it is seen that the claim case has been dismissed against the insurer of the container namely, Shriram General Insurance Company Ltd (respondent no. 7). In the aforesaid backdrop, service of notice of appeal upon respondent nos. 5, 6 and 7 stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.31,22,750/- 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 appeal being no. FMAT(MV) 625 of 2022.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have preferred appeal being FMAT (MV) 261 of 2023.

Both the appeals are taken up together for consideration and disposal.

Mrs. Sucharita Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in determining the income of the victim at Rs. 18,500/- per month and failed to consider evidence of the employer PW-3 who has categorically stated that the monthly salary of the victim was Rs.14,500/- per month. Further, the employer of the victim has admitted in cross-examination that he did not maintain any salary register for the staff which raises a doubt as to the income of the victim claimed by the claimants. Moreover, she submits that the learned Tribunal erred in granting Rs.1,76,000/- under loss of consortium in favour of all the claimants whereas it ought to have granted Rs.44,000/- under the such heads to the widow only in view of Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. In light of her aforesaid submission, she prays for modification of impugned judgment and award of the learned Tribunal.

In reply to the above contentions raised on behalf of the insurance company, Mr. Ashique Mandal, learned advocate for the respondents-claimants submits that from the evidence on record there is nothing to suggest that the vouchers issued by the employer and proved before the Court in support of income of the victim is manufactured or procured. Such vouchers clearly shows that the victim used to receive Rs.18,500/- from his employer on monthly basis. The vouchers produced by the employer has never been challenged by the insurance-company either through independent evidence or in cross-examination and therefore such documents are very much acceptable for determining the income of the victim. Learned Tribunal has rightly relied on such documents to assess monthly income of the victim which does not call for interference. He further submits that as per the Aadhar Card, the date of birth of the victim is 1st January, 1982. However, learned Tribunal has erroneously considered the date of birth of the victim (11.07.1976) reflected in the PAN Card and determined the age of the victim to be 42 years. The Aadhar Card is a document of citizenship issued by the Government and the same should prevail over the recordings in the PAN Card. Thus, the age shown in Aadhar Card should be relied upon. As per the Aadhar Card, the age of the victim at the time of accident is 36 years and as such multiplier should be 15 instead of 14 adopted by the learned Tribunal.

He further submits that the claimants are entitled to an amount equivalent to 40% of annual income of the victim towards future prospect since at the time of accident he was 36 years of age and was on fixed salary.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim. *Secondly*, whether the learned Tribunal erred in applying multiplier 14 instead of 15. *Thirdly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect. *Lastly*, whether the learned Tribunal erred in granting Rs.1,76,000/- towards loss of consortium in favour of all the claimants.

With regard to the first issue relating to the determination of income, it is found that the learned Tribunal has determined the income of the victim at about 18,500/- per month. The claimants in their claim application has claimed an amount of Rs.18,500/- to be the monthly income of the victim by working as driver under *"M/s. Anurag Enterprise"*. PW-1 Musarrat Khatoon, widow of the deceased in her evidence also claimed that her deceased husband was a driver and used to draw salary of Rs.18,500/- per month as an employee under *"M/s. Anurag Enterprise"*. In order to establish the income of the victim, the claimants have examined the proprietor of *"M/s, Anurag Enterprise"* namely, Mr. Anand Jaiswal as PW3 who deposed that the victim was an employee under his concern as driver and used to earn monthly salary of Rs.14,500/- together with incentive of Rs.4,000/-. He produced six vouchers which were marked as **Exhibit 18** with objection. It is a fact that in cross examination this witness deposed that he did not maintain any salary register of the staff. Although such document namely vouchers at the time of tendering of evidence has been objected to but during the course of proceeding no other contrary evidence has been adduced to challenge such documents. Upon perusal of the vouchers, it is found that prior to accident the victim used to earn salary of Rs.14,500/- together with incentive of Rs.4,000/- per month. Thus, the victim at the time of accident used earn Rs.18,500/- per month including incentive.

With regard to determination of age of the victim, Mr. Ashique Mandal, learned advocate for respondents-claimants has strenuously argued that though Aadhar Card and PAN Card shows variance in the date of birth, yet the Aadhar Card should be given precedence over the PAN Card. In the backdrop of such argument, let me examine as to whether the date of birth recorded in the Aadhar Card is a conclusive proof of the same. In order to enable a resident to get Aadhar number, he is required to submit demographic as well as biometric information i.e., apart from giving information relating to name, date of birth and address, biometric information in the form of photograph, fingerprint, iris scan is also to be provided. Aadhar number given to a particular person is treated as unique number as it cannot be reassigned to any other individual. If a resident does not have any valid supporting date of birth document, date of birth is recorded on the basis of declared and approximate date of birth. In case of approximate date of birth, the age is verbally communicated by the resident to the operator and ECMP client calculates the year of birth, and by default, consequently, the date of birth is recorded as 1st January of that calendar year. The Aadhar (Targeted delivery of financial and other subsidies, benefits and services) Act No.18 of 2016 does not mention that Aadhar can be accepted as proof of date of birth. The date of birth is recorded on the basis of self declaration given by the resident. Therefore, in case of dispute regarding correctness of the date of birth, the burden of proof lies with the resident/card holder. In the present case at hand, it is found the Aadhar Card shows the date of birth to be 1.1.1982 whereas the PAN Card issued by the Income Tax department shows the date of birth of the victim to be 11th July, 1976. There are no supportive documents to prove the correctness of the date of birth noted in the Aadhar Card. In case a person relies on the entries in Aadhar Card in regard to address, date of birth etc. on the basis of Aadhar Card, under the Evidence Act, it cannot be said that the entries in those regards are conclusive proof of those facts. Therefore, the date of birth mentioned in the Aadhar Card in the absence of proof of its correctness cannot be accepted. The date of birth thus appearing in the PAN Card, in the facts and circumstances of the case, should be taken into consideration. The date of birth of the victim is 11th July, 1976 as per the PAN Card. Thus, on the relevant date of accident, the age of the victim is 41 years 10 months 3 days. Following the observation of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, the multiplier should 14 as has been rightly adopted by the learned Tribunal.

With regard to future prospect, since at the time of accident the victim was more than 40 years of age and was on a fixed salary, the claimants are entitled to an amount equivalent to 25% of the annual income of the victim, as has been rightly adopted by the learned Tribunal.

So far as general damages are concerned, it is found that the learned Tribunal has granted an amount of Rs. 1,76,000/- towards loss of consortium. However, following the proposition laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to loss of consortium of Rs. 40,000/- with escalation of 10% on such amount since three years have elapsed.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly Income	Rs.18,500/-
Yearly Income (Rs. 18,500/- x 12)	Rs.2,22,000/-
Add: 25% of the annual income towards future prospect	Rs.55,500/-
Total income	Rs.2,77,500/-
Less: 1/4th towards personal and living expenses	Rs.69,375/-
	Rs.2,08,125/-
Multiplier 14 (Rs.2,08,125/- x 14)	Rs.29,13,750/-
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 compensation	Rs.29,90,750/-

Thus, the claimants are entitled to compensation of Rs. 29,90,750/- together with interest @ 6% per annum from the date of filing of claim application (18.09.2018) till payment.

It is found that the appellant-insurance company has deposited a sum of Rs. 39,22,156/- *vide* OD Challan No. 3923 dated 27th February, 2023 and an amount of Rs.25,000/- towards statutory deposit *vide* OD Challan No. 3389 dated 10th January, 2023.

Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount.

The respondent nos. 1 to 4-claimants are directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest in favour of the respondent nos. 1 to 4 (claimants) in equal proportion, after making payment of Rs.44,000/- in favour of the respondent no.1, widow of the deceased towards spousal consortium, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The respondent no. 1 being the mother and natural guardian of the respondent nos. 2 to 4 shall receive the share of the minors on their behalf and shall keep the same in a fixed deposit scheme of any nationalized bank or post office till attainment of majority of the said minors.

Upon satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the insurance company.

With the aforesaid observations, both the appeals being FMAT (MV) 625 of 2022 and FMAT (MV) 261 of 2023 stand disposed of. The impugned judgment 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.

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

(Bivas Pattanayak, J.)