16.11.2023
Ct. no.654
Item no.10

Sn/KB

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

**FMA 1410 of 2022**

**Saleha Bewa & Ors.**
**Vs.**
**ICICI Lombard General Insurance Co. Ltd. & Anr.**

Ms. Sima Ghosh
... for the appellants-claimants
Mr. Saswata Bhattacharjee
the respondent no.1-insurance co.

This appeal is preferred against the judgment and award dated 24th December, 2020 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 1st Court, Berhampore, Murshidabad in M.V. Case No.302 of 2009 granting compensation of Rs.3,26,500/- together with interest in favour of the claimant nos. 1 to 5 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 3rd September, 2008 at about 23-00 hours while the victim was waiting at the western side of Katadara Bilaspur Bridge near Berhampore Jalangi Highway to take his stack of bananas by vehicle at that time the offending vehicle bearing registration no. WB-57/8887 (lorry) coming from Bilaspur side in a rash and negligent manner dashed the victim, as a result of which the victim sustained multiple injuries on his person. Immediately the victim was taken to Domkal hospital but since his condition was grave he was referred to Berhampore General Hospital wherefrom he was again referred to NRS Medical College and Hospital. However, the victim was admitted to Sastik Sebasadan Hospital, Calcutta, where his lower limb was amputated and he was discharged. On 17th February, 2008, the victim succumbed to his injuries due to septicemia. On account of sudden demise of the victim, his mother, two wives and minor children filed application for compensation of Rs.9,35,000/- under Section 166 of the Motor Vehicles Act, 1988. The other two daughters of the deceased namely Hasina Khatun and Madina Khatun were impleaded as claimants vide Order no.17 dated 13th March, 2012 by the learned Tribunal. During the pendency of the claim application, the mother of the deceased-victim, namely, Jamela Bewa expired and her name was expunged by the learned Tribunal from the array of claimants vide its Order no. 44 dated 8th July, 2016.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **6** respectively.

The respondent no.1-insurance Company adduced the evidence of one witness and produced document, which has been marked as **Exhibit 'A'.**

The owner of the offending vehicle (respondent no.2) did not contest the claim application and the case has been disposed of ex *parte* against him. In the aforesaid backdrop, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 3,26,500/- together with interest @ 3% per annum in favour of the claimant nos. 1 to 5 respectively under Section 166 of the Motor Vehicles Act. However, no compensation was granted to added claimant no. 6, Hasina Khatun and claimant no.7, Madina Khatun.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimant nos. 1 to 5 have preferred the present appeal. It is relevant to note that claimant nos. 6 and 7 have not preferred the appeal.

Ms. Sima Ghosh, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim at Rs.3,000/- per month whereas it ought to have considered the income at Rs.6,000/- per month since the said income is supported by cogent evidence on record. She further submits that as per the Post-mortem report **(Exhibit-4)** as well as oral evidence of PW-2, brother of the deceased, the victim at the time of accident was 42 years of age. However, the learned Tribunal relying on the evidence of PW-3, erroneously determined the age of the victim as 48 years and applied multiplier of 13. Considering the age of the victim to be 42 years, the multiplier to be adopted in the present case should be 14 instead of 13 adopted by the learned Tribunal. She further submits that the claimants are also entitled to future prospect of an amount equivalent to 25% of the annual income of the victim. Further, the deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/3^{rd}$ adopted by the learned Tribunal. She further submits that the claimants are entitled to general damages of Rs.70,000/- together with escalation of 10%. In the light of her aforesaid submissions, she prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Saswata Bhattacharjee, learned advocate for the respondent no.1-insurance company submits that there are no cogent evidence in support of the claim of income of Rs.6,000/- per month from the business of the victim and as such the income of Rs. 3,000/- per month determined by the learned Tribunal is reasonable in the facts and circumstances of the case. He further submits that the PW-3, who accompanied the victim to the hospital, reported about the age of the victim to the Doctor, which has been recorded in the referral card **(Exhibit-6)**. The age 48 years of the victim recorded in the referral card **(Exhibit-6)** is prior to age 42 years recorded in the Post-mortem report **(Exhibit-4)** and, therefore, the age appearing in referral card **(Exhibit-6)** of 48 years should be accepted. The learned Tribunal taking into consideration the age of 48 years of the victim has rightly applied multiplier of 13, which should not be interfered with. In view of the above submission, he prays that the impugned judgment and award of the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, following issues that has fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim. *Secondly,* whether the multiplier should be 14 instead of 13 adopted by the learned Tribunal. *Thirdly,* whether the claimants are entitled to future prospect of 25% of annual income of the victim. *Fourthly*, whether the claimants are entitled to general damages of Rs.70,000/- with escalation of

10% and *lastly,* whether the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd adopted by the learned Tribunal.

With regard to the first issue relating to determination of income of the victim, it is found that the learned tribunal has determined the income of the victim at Rs.3,000/- per month. As per the claim application the victim used to run business of selling banana and it is claimed that the victim at the time of accident used to earn Rs.6,000/- per month. P.W.1-widow of the deceased (Sahela Bibi) deposed in cross-examination that her deceased husband was supplier of banana to different places. It is pertinent to note that no such document of business has been produced by the claimants in support of such claim. Accordingly, the claim of Rs. 6,000/- per month as income of the deceased is not acceptable. Be that as it may, bearing in mind the economic factors prevalent in the year 2008 when the accident has taken place I am of the opinion that the income of Rs.3,000/- per month determined by the learned tribunal does not call for interference.

With regard to the second issue relating to multiplier, it is found that the learned tribunal has adopted multiplier of 13 considering the age of the victim to be 48 years. The learned tribunal has relied on the evidence of P.W.3 Tabibul Islam and the referral card **(Exhibit-6)** to come to a finding that at the time of accident the victim was 48 years of age. As per the Post-mortem report **(Exhibit-4)** the victim at the time of accident was 42 years of age. P.W.2 Kabil Mondal, brother of the deceased, in cross-examination deposed that the victim at the time of accident was 42 years of age. Though the learned tribunal has observed that P.W.3 reported the age of the victim as 48 years to the doctor, however, it is relevant to note that P.W.3 throughout his evidence has not uttered that he reported the age of the victim of 48 years to the doctor. It is also not the fact that P.W.3 is the only person who accompanied the victim to the hospital which will be evident from his cross examination that he accompanied the victim upto Domkol and thereafter the victim was accompanied by other people to Berhampore. P.W. 3 is also not a near relative of the victim who would have personal knowledge about the age of the victim. Save and except the Post-mortem **(Exhibit-4)** there are no other documentary evidence such as voter's card or ration card. Taking into account the age of the victim of 42 years recorded by the autopsy surgeon in the Post-mortem report **(Exhibit-4)** supported by aforesaid oral evidence of the brother of the victim (PW2), the age of 42 years as noted of the Post-mortem report is acceptable. Considering the age of the victim to be 42 years, the multiplier to be adopted in the present case should be 14 instead of 13 applied by the learned tribunal.

With regard to entitlement of future prospect, since at the time of accident the victim was 42 years of age and was self-employed, following the observation of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi*** and others reported in ***(2017) 16 SCC 680***, the claimants are entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect.

With regard to general damages, it is found that the learned tribunal has granted Rs.9,500/- under such head. However, in view of the decisions of the Hon'ble Supreme Court in *Pranay Sethi (supra),* the claimants are entitled to general damages under the 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 together with escalation of 10% on such heads.

Coming to the last issue relating to deduction towards personal and living expenses of the deceased, it is found that the learned Tribunal has deducted 1/3rd on such head. However, following the principles laid down by Hon'ble Supreme Court in the case of ***Sarala Verma versus Delhi Transport Cooperation & Another*** reported in ***2009 (6) SCC 121***, since the victim at the time of accident had 5 dependants, the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd considered by the learned Tribunal.

Bearing in mind the aforesaid, calculation of compensation is made hereunder.

**Calculation of Compensation**

| | |
|---|---|
| Monthly income | Rs.3,000/- |
| Yearly income<br>(Rs.3,000/- x 12) | Rs.36,000/- |
| Add: 25% of the yearly income<br>towards future prospect | Rs.9,000/- |
| | Rs.45,000/- |
| Less: 1/4th towards personal<br>and living expenses | Rs.11,250/- |
| | Rs.33,750/- |
| Multiplier 14<br>(Rs.33,750/- x 14) | Rs.4,72,500/- |
| Add: General damages<br>Loss of estate: Rs.15,000/-<br>Loss of consortium: Rs.40,000/-<br>Funeral expenses: Rs.15,000/- | Rs.70,000/- |
| Add: 10% escalation on<br>general damages | Rs.7,000/- |
| Add: Medical Expenses | Rs. 5,000/- |
| Total | Rs.5,54,500/- |

Thus the total compensation comes to Rs.5,54,500/-.

It is informed that the claimants have already received the compensation amount of Rs. 3,26,500/- together with interest granted by the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 2,28,000/-

together with interest @ 6% per annum from the date of filing of the claim application till payment.

Respondent No.1-insurance company is directed to deposit the balance amount of compensation together with interest as indicated above by way of cheque before the Learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Upon deposit of the balance amount of compensation together with interest, learned Registrar General, High Court, Calcutta shall release the balance amount in favour of the appellants-claimants, after making payment of Rs. 22,000/- each in favour of appellant nos.1 & 3, widows of the deceased, towards spousal consortium, in equal proportion subject to satisfaction of their identity.

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

The appellant no.3, being the mother and natural guardian of minor appellant nos.4 & 5, shall receive the share of the said minors on their behalf and keep the same in a fixed deposit account of any nationalized bank or post office until attainment of their majority.

With the aforesaid observations, the present 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 connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower court records be forwarded to the learned Tribunal for information in accordance with the rules.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**