

31.01.2023
SL No.27
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 413 of 2022

IA No:CAN/1/2019 (Old No.: CAN/7279/2019)

**The Oriental Insurance Company Ltd.
Vs.
Rina Mondal & Ors.**

Mr. Rajesh Singh
...for the appellant-Insurance Co.
Mr. Jayanta Kumar Mandal
...for the respondents-claimants.

This appeal is directed against the judgment and award dated 5th March, 2019 passed by learned Additional District Judge, 1st court, Barasat, 24-Parganas (North) in M.A.C. Case no. 23 of 2013 granting compensation of Rs. 6,41,200/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

As per the report of the Additional Stamp Reporter dated 19.8.2021 the appeal is preferred within the statutory period of limitation.

Accordingly, the present appeal is formally admitted and registered.

Since respondent no.6-owner of the offending vehicle did not contest the claim application hence service of notice of appeal upon the said respondent is dispensed with.

With the consent of both the parties, the preparation of informal paper books and calling for of lower court records is dispensed with.

The brief fact of the case is that on 13th April, 2013 at about 8:30 AM while the victim was working as a labour for constructing PWD road at Tentulia PWD office at that time the offending vehicle bearing registration no. WB-25E/8443 (JCB) in a high-speed dashed the victim as a result of which the victim sustained serious injuries and was immediately taken to hospital where the attending doctor declared him dead. On account of sudden demise of the deceased-victim, the claimants being the widow, minor children and parents of the deceased filed application under Section 163A of the Motor Vehicles Act, 1988 for compensation.

The claimants in order to establish their case examined two witnesses and produced documents which are marked as **Exhibits 1 to 9** respectively.

Appellant-insurance company also adduced evidence of one witness and produced documents marked as **Exhibit A and B** respectively.

Upon considering the materials on record and the evidence produced on behalf of the respective parties the learned tribunal granted compensation in favour of the claimants to the tune of Rs.6,41,200/- together with interest under Section 163A of the Motor Vehicles Act, 1988. After passing of the judgment the name of claimant No. 6-mother of the deceased was expunged since she died

on 08.03.2018 prior to delivery of judgment and the award was modified in favour of respondents-claimants vide order no33 dated 15.03.2019 by the learned tribunal

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has preferred the present appeal.

Mr Rajesh Singh, learned advocate for appellant-insurance company submits that though the claimants filed the application under Section 163A of the Motor Vehicles Act yet the learned tribunal erroneously made calculations on wrong presumption that the application is one under Section 166 of the Motor Vehicles Act. He further submits that the learned tribunal granted future prospect of 40% of the annual income of the deceased-victim and also awarded general damages of 70,000/- in favour of the claimants which is palpably a wrong computation so far as application under Section 163A of the Motor Vehicles Act is concerned. Furthermore, he submits that the computation of compensation in an application under Section 163A of the Motor Vehicles Act should be made in accordance with the Second Schedule to the Act. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award.

Mr Jayanta Kumar Mandal, learned advocate for respondent nos. 1 to 5-claimants concurs with the submissions advanced on behalf of appellant insurance company. Mr Mandal, learned for respondents-claimants submits that the multiplier should be 18.

Having heard the learned advocates for the respective parties, it is found that the appellant-insurance company has thrown challenge to the impugned award of the learned tribunal on the ground of erroneous computation of compensation amount in an application under Section 163A of the Motor Vehicles Act.

Upon going through the impugned judgment, it is found that the learned tribunal has granted an additional amount of 40% of the annual income of the deceased towards future prospect and also granted general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses amounting to Rs.70,000/-. However, in view of Second Scheduled to Section 163A of the Motor Vehicles Act the claimants are entitled to figures and amounts against specific heads as mentioned in the Second Schedule to the Act providing for structured formula and therefore the computation of compensation made by learned tribunal needs to be rectified. Therefore, the grant towards future prospect of 40%

of annual income of the deceased is set aside and the amount towards general damages is modified to Rs.9,500/- under the conventional heads.

The learned tribunal has noted that as per voter’s identity card (**Exhibit 7**) the date of birth of the victim is 15.5.1984. Therefore, the accident having taken place on 13.4.2013, the victim was aged 28 years 11 months. Thus, following the Second Schedule to the Act and taking into account the aforesaid age of the victim, the multiplier should be 18 instead of 17.

In view of the above discussion the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income.....	Rs.3,000/-
Annual Income.....(Rs.3,000/- X 12).....	Rs36,000/-
Less: Deduction of 1/3 rd of the annual Income (towards personal and living expenses).....	<u>Rs.12,000/-</u>
	Rs.24,000/-
Adopting multiplier 18 (Rs.24,000/- X 18)....	Rs.4,32,000/-
Add: General Damages.....	<u>Rs.9,500/-</u>
Total Compensation.....	Rs.4,41,500/-

Thus, the claimants are entitled to Rs. 4,41,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 30.9.2013) till deposit. It is found that the appellant-insurance company has deposited statutory amount of Rs.25,000/- vide OD challan no.3269 dated 29.1.2021 and an amount of Rs. 8,88,170/- vide OD challan no. 1635 dated 25.8.2022 with the Registry of this Court. Both the

aforesaid amount along with accrued interest shall be adjusted against the entire compensation amount and the interest indicated above.

The balance amount, if any, on full satisfaction of the award be refunded to the appellant-insurance company.

Learned Registrar General, High Court, Calcutta shall release the amount of compensation and the interest indicated hereinabove in favour of the claimants in equal proportion upon satisfaction of their identity and on payment of *ad valorem* court fees, if not already paid.

Respondent no.1-claimant, being the mother and natural guardian of minor respondent no.2 to 4 shall receive the share of the minors and shall keep the same in any fixed deposit scheme of any nationalized bank or Post Office until attainment of majority by the said minors.

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

All connected applications, if any, stands disposed of.

Interim orders, if any, stands disposed of.

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

(Bivas Pattanayak, J.)

