

17.07.2023
Ct. 654
D/4&5
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 790 of 2022
With
CAN 3 of 2018(Old No. 7078 of 2018)
With
CAN 4 of 2020
Public Works Department (PWD), State of West
Bengal
-Vs-
Bina Hela & Ors.
With
COT 18 of 2020
Bina Hela & Ors.
-Vs-
Public Works Department (PWD). State of West
Bengal

Mr. Soumo Chaudhury
... for the appellant

Mr. Ashique Mondal
... for the respondents- claimants

This appeal is preferred against the judgment and award dated 30th August, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, 11th Court, Alipore, South 24 Parganas in MAC case no.95 of 2015 granting compensation of Rs.19,11,750/- 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 9th December, 2009 at about 10-30 a.m. while the victim was crossing the road diagonally near the crossing of Hastings Park

Road and Belvedere Road under Alipore Police Station at that time the offending vehicle bearing registration number WBB-5908 (Jeep) in a rash and negligent manner dashed the victim from behind, as a result of which, the victim sustained fatal injuries. Immediately after the accident the victim was removed to Kothari Medical Centre where he succumbed to his injuries on the same day at 4-00 p.m. On account of sudden demise of the victim, the claimants being the widow, daughters and sons filed application for compensation of Rs. 14,20,000/- 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 8** respectively.

The appellant-P.W.D. authorities also adduced evidence of three witnesses and produced documents, which have been marked as **Exhibit A to J/1** respectively.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.19,11,750/- together with interest in favour of the claimants from the date of appearance of the P.W.D. authorities, i.e, 12-02-2014, till the date of payment 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 appellant-P.W.D. authority has preferred the present appeal.

Challenging the impugned award, the claimants have also preferred the cross objection being C.O.T. 18 of 2020.

Both the appeal and the cross-objection are taken up together for consideration and disposal.

Mr. Soumo Chaudhury, learned advocate for the appellant-PWD authority submits that the claimants have failed to prove the fact of rash and negligent act of the driver of the offending vehicle. Referring to the evidence of the PW-1, widow of the deceased, he submits that the said witness has made contradictory statement in her evidence-in-chief and in the cross-examination inasmuch as in the evidence-in-chief she deposed that she did not witness the accident, whereas, in the cross-examination she deposed that on the date of accident she was walking behind her husband and thus claimed herself to be an eyewitness to the occurrence. Such contradiction in the evidence of PW-1 makes her evidence with regard to the rash and negligent act of the driver of the offending vehicle untrustworthy and cannot be accepted. Further, as per the evidence of D.W. 2 and D.W. 3 the accident has taken place owing to mechanical fault in the system of

the vehicle and thus, the accident which took place on the relevant date has not resulted from the rash and negligent act of the driver of the offending vehicle.

So far as the quantum of compensation is concerned, Mr. Chaudhury, learned advocate for the appellant P.W.D. Authority submits that the learned Tribunal erred in adopting the multiplier of 13 whereas it ought to have adopted multiplier 11 since at the time of accident the victim was almost 51 years of age as would be evident from the Voters' Identity Card of the victim produced by the claimants. He further submits that the amount towards future prospect should be 15% of the annual income of the deceased instead of 30% granted by the learned Tribunal since the victim was more than 50 years of age on the relevant date of accident. Moreover, he indicates that the claimants are entitled to general damages of Rs. 70,000/- only under the conventional heads whereas the learned Tribunal has erroneously allowed Rs. 1,27,500/- under such heads. Further more, deduction towards personal and living expenses of the deceased should be 1/3rd since the daughters of the deceased are married and were not dependent on the victim. He further submits that since the widow of the deceased is getting family pension, hence the said amount received as pension should be deducted from the compensation amount assessed. In the light of the aforesaid submissions, he prays that the

impugned order of the learned Tribunal should be modified.

In reply to the contentions raised on behalf of the appellant PWD Authority, Mr. Ashique Mondal, learned advocate for the respondent nos. 1 to 6 (claimants) submits that the contradictions in the evidence of P.W.1 even if discounted, the evidence of eyewitness P.W.2 with regard to rash and negligent act of the driver of the offending vehicle has remained unchallenged in cross-examination. The evidence of the eyewitness is further corroborated by the Crime Index (**Exhibit-7**) proved by P.W.3, an ASI of police. Therefore, the materials produced by the claimants with regard to rash and negligent act clearly establishes such fact. Further, he submits that there is no iota of evidence that the vehicle owing to mechanical failure dashed the victim on the relevant date. It is settled proposition of law that in order to sustain a plea that the accident was caused due to mechanical defect of the vehicle is to be proved by the party raising such plea. Until and unless such plea of mechanical failure is established, the appellant PWD authority cannot be exonerated from its liability. To buttress his contentions, he relies on the decisions of the Hon'ble Supreme Court passed in **Minu B Mehta And Another versus Balkrishna Ramchandra Nayan And Another** reported in **(1977) 2 SCC 441** and **Gian Chand And Others versus Gurlabh Singh and**

Others reported in **(2016) 16 SCC 590**. He further submits that the learned Tribunal has rightly applied the multiplier 13 since at the time of accident, the victim was 50 years old. So far as the future prospect is concerned, he submits that since the victim was 50 years old and not more, following the propositions laid down by the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and Others** reported in **2017 ACJ 2700**, the claimants are entitled to an amount equivalent to 30% of the annual income of the deceased. He submits for escalation of the general damages by 10% since three years have already elapsed. Moreover, he submits that the benefits extended to the dependents of the deceased Government employee including family pension, life insurance and provident fund etc. must remain unaffected and cannot be allowed to be deducted which in any way would be paid to the dependents of the deceased Government employee. In support of his contentions, he relies on the following decisions of the Hon'ble Supreme Court:

- i. **Helen C. Rebello and Ors. versus Maharashtra State Road Transport Corpn. & Ors.** reported in **(1999) 1 SCC 90**;
- ii. **United India Insurance Co. Ltd. And Others versus Patricia Jean Mahajan And Others** reported in **(2002) 6 SCC 281**;

iii. ***Reliance General Insurance Company Limited versus Shashi Sharma And Others*** reported in ***(2016) 9 SCC 627***.

Further more, he submits that the claimants have withdrawn an amount of Rs. 12,69,228/- out of the amount deposited by the PWD Authority in terms of the order dated 8th July, 2022 and in such event, the claimants are to appropriate the amount already received by them pursuant to the interim order towards interest, then towards costs and the balance towards principal as on the date of withdrawal of the amount. To buttress his contention, he relies on the decisions of the Hon'ble Supreme Court passed in ***Gurpreet Singh versus Union of India*** reported in ***(2006) 8 SCC 457*** and ***V. Kala Bharathi And Others versus Oriental Insurance Company Limited Branch Chitoor*** reported in ***(2014) 5 SCC 577***. Further more, he submits that the learned Tribunal erred in granting interest from the date of appearance of the PWD Authority whereas it ought to have granted interest from the date of filing of the claim application. In view of the aforesaid submissions, he prays for enhancement and modification of the compensation amount.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the rash and negligent act of the driver of the offending vehicle has been proved

by the claimants; *secondly*, whether the multiplier should be 11 instead of 13; *thirdly* whether the amount towards future prospect should be 15% of the annual income of the deceased instead of 30%; *fourthly*, whether the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/4th adopted by the learned Tribunal; *fifthly* whether the general damages should be Rs. 70,000/- under the conventional heads instead of Rs. 1,27,500/- granted by the learned Tribunal; *Sixthly*, whether the pension received by the widow should be deducted from the amount of compensation receivable and *lastly*, whether the interest on the compensation amount should be from the date of filing of the claim application.

With regard to the first issue relating to rash and negligent act of the driver of the offending vehicle, it is found that the claimants in order to establish such fact has adduced the evidence of widow of the deceased, Bina Hela of P.W.1 and one independent witness namely, Ujjwal Gayen as P.W.2 and also proved the Crime Index (**Exhibit-7**) through P.W.3, Sadhan Kr. Saha, ASI of Police. P.W.1, widow of the deceased in her evidence-in-chief deposed that she did not see the accident and the fact of accident was informed to her by the local people. However, in her cross-examination, she deposed that at the time of accident she was with her husband who was in front of her and they were walking

through the footpath of Tramline Road near Rajhans Building. Thus, it is found that the P.W. 1 has made contradictory statements with regard to her presence near the scene of occurrence. P.W. 2, Ujjwal Gayen stated in his evidence-in-chief that on 09.12.2009 at about 10.30 a.m. the driver of the offending vehicle drove the vehicle along Hastings Park Road from south to north in a rash and negligent manner dashed one pedestrian as a result of which the pedestrian fell down on the road and sustained injuries and was removed to Kothari Medical Centre. In his cross-examination, he narrated the fact as stated in the chief. The evidence of this witness with regard to rash and negligent act of the driver of the offending vehicle has remained unchallenged in the cross-examination. Mr. Chaudhury, learned advocate for appellant-PWD Authority, has strenuously argued that the accident on the relevant date has taken place due to mechanical failure of the offending vehicle and there was no negligence of the driver of the vehicle. In order to consider the aforesaid contention, let me examine the materials placed in support of such contention. In the written statement filed on 18.05.2011, the PWD Authority has raised plea that the accident has taken place due to failure of Mechanical Control System of the vehicle. PWD Authority adduced the evidence of Assistant Engineer, Ashok Kumar Roy, as D.W. 2 who on the relevant date

of incident was travelling in the offending vehicle. He deposed that the offending vehicle on the relevant date hit a roadside tree owing to failure of the Mechanical Control System of the vehicle. Similarly, D.W. 3, driver of the offending vehicle also deposed that the incident occurred due to failure of Mechanical Control System of the vehicle. Needless to mention, though the above witnesses of the PWD authorities deposed in their evidence-in-chief that the accident had occurred due to failure of Mechanical Control System of the vehicle yet no documents were placed before the Court to primarily establish that on the relevant date, due to failure of Mechanical Control System of the vehicle, the accident took place. The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care the defect remained hidden. In the absence of cogent documentary evidence establishing such fact and that in spite of taking reasonable care the accident has taken place, PWD authority cannot be exonerated by raising the ground of mechanical failure of the vehicle in the accident. I find substance in the submissions of Mr. Mondal, learned advocate for the claimants relying on *Minu B Mehta (supra)* and *Gian Chand (supra)* in this regard. The Crime Index (**Exhibit-7**) also is corroborative of the manner of the accident taking place. Considering the

unchallenged evidence of P.W. 2 with regard to rash and negligent act of the driver of the offending vehicle corroborated by the Crime Index and also bearing in mind, the absence of cogent contrary evidence, it goes without saying that the claimants have succeeded in establishing the fact of rash and negligent act of the driver of the offending vehicle.

Mr. Choudhury relying on the evidence of D.W. 2 and D.W. 3 who were the occupant and driver of the vehicle tried to impress upon the Court that the said witnesses have categorically stated that they did not see the victim being hit by the vehicle. Though D.W. 2 and D.W. 3 have stated in their evidence-in-chief that the vehicle did not hit the victim yet one cannot be oblivious to the fact that in their evidence-in-chief itself, they have stated that they fell down unconscious due to the said accident. For the aforesaid reason, their evidence that the vehicle did not hit the victim is unsustainable.

With regard to second issue, it is found that the learned Tribunal has adopted multiplier of 13. Mr. Choudhury, learned advocate for the appellant PWD authority has strenuously argued that the Voters' Identity Card does not specify the date of birth and therefore, the victim was more than 50 years of age and the multiplier should be scaled down to 11 in the facts and circumstances of the case. *Per contra*, Mr. Mondal, learned advocate for the respondents-claimants has

argued that there is no contrary evidence that on the relevant date of accident, the victim was 50 years of age and therefore, the multiplier 13 adopted by the learned Tribunal is correct. The only document produced in support of the age of the victim is Voters' Identity Card marked as **Exhibit-3**. The Voters' Identity Card shows his year of birth to be 1959. Such Voters' Identity Card has been exhibited with formal proof dispensed with. No contrary evidence has been led from the side of the appellant PWD authority challenging the age of the deceased. That apart, there is also no suggestion put to P.W.1, Bina Debi Hela, who produced the Voter's Card, challenging the age of the victim. Rather in cross-examination, she stated the age of her deceased husband to be 50 years. Taking into account such aspect, the learned Tribunal relying on the Voters' Identity Card has determined the age of the victim to be 50 years. I do not find any impropriety so far as the determination of age of the deceased by the learned Tribunal is concerned. Considering the age of the victim to be 50 years at the time of accident, following the observations of the Hon'ble Supreme Court made in **Sarla Verma and others versus Delhi Transport Corporation and another** reported in **2009 ACJ 1298**, the multiplier should be 13 as has been rightly adopted by the learned Tribunal.

With regard to the third issue, since the victim at the time of accident was 50 years of age and admittedly was in permanent employment, following the observations of the Hon'ble Supreme Court made in *Pranay Sethi (supra)*, the claimants are entitled to an amount equivalent to 30% of the annual income of the deceased towards future prospect.

With regard to the fourth issue relating to deduction towards personal and living expenses of the deceased, the learned Tribunal has deducted 1/4th of the annual income of the deceased towards his personal and living expenses. It is apparent from the materials on record that the daughters, namely respondent nos. 2 and 3, of the deceased are married and respondent nos. 4 and 6 are major sons. Considering the aforesaid, the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/4th.

With regard to the fifth issue relating to general damages, it is found that the learned Tribunal has granted Rs.1,27,500/- on such head. However, following the observations of the Hon'ble Supreme Court made in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional head of loss of estate, loss of consortium and funeral expenses of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Further, since three years have elapsed, the claimants

are entitled to escalation of 10% on the general damages.

The sixth issue relates to the aspect whether the pension received by the widow of the deceased should be adjusted against the compensation amount. Mr. Choudhury, learned advocate for the appellant PWD authority has argued that since the widow of the deceased is receiving family pension that should be deducted from the entire compensation amount. On the contrary, Mr. Mondal, learned advocate for the respondents-claimants relying on *Helen C. Rebello (supra)*, *Patricia Jean Mahajan (supra)* and *Shashi Sharma (supra)*, has argued that family pension received by the widow cannot be deducted against the compensation receivable by the claimants under the Motor Vehicles Act. Following the principles laid down in the aforesaid decisions cited on behalf of the claimants, the family pension received by the widow is a benefit extended to her upon demise of her husband who was a Government employee and such pension received cannot be allowed to be deducted from the compensation amount. Thus, the argument advanced by the learned advocate for the appellant PWD Authority falls short of merits.

Coming to the last issue with regard to interest on compensation amount, it is found that the learned Tribunal granted interest on the compensation amount

from the date the appellant PWD authority entered appearance (i.e. 12.02.2014) without assigning any reason. Be that as it may, the claim application has been filed on 09.04.2010. Accordingly, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application i.e. from 09.04.2010 till payment.

No other factors have been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.11,731/-
Annual income (Rs.11,731/- x 12)	Rs.1,40,772/-
Add : 30% of the annual income towards future prospect	Rs.42,232/-
	Rs.1,83,004/-
Less: 1/3 rd towards personal and living expenses	Rs.61,001/-
	Rs.1,22,003/-
Multiplier 13 (Rs. 1,22,003/- x 13)	Rs.15,86,039/-
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.16,63,039/-

Thus, the claimants are entitled to compensation of Rs. 16,63,039/- together with interest @ 6% per annum from the date of filing of the claim application (09.04.2010) till payment. It is found that pursuant to order of this Court dated 21.12.2017 and 15.02.2018,

the appellant PWD authority has deposited a sum of Rs.25,13,454/- vide OD Challan no. 2940 dated 18.02.2018 and has also deposited the statutory amount of Rs. 25,000/- vide OD Challan no. 209 dated 27.04.2017 with the registry of this Court. By dint of order dated 08.07.2022, the respondents-claimants have withdrawn an amount of Rs. 12,69,228/-. Following the principles laid down by the Hon'ble Supreme Court in *Gurpreet Singh (supra)* and *V. Kala Bharathi (supra)*, the amount withdrawn by the respondents-claimants be adjusted first against the interest receivable on the compensation amount and then if there is any balance, the same shall be adjusted against the principal amount. Both the aforesaid deposits made by PWD authority together with accrued interest shall be adjusted against the entire compensation amount.

The respondents-claimants shall intimate the appellant-PWD authority of the balance amount receivable. Upon receiving intimation, as aforesaid, the appellant-PWD authority shall deposit the balance amount by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date of such intimation.

The respondents-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation, the learned Registrar General, High Court, Calcutta shall at first release Rs. 44,000/- in favour of the respondent no. 1 widow of the deceased towards spousal consortium and thereafter 1/2 of the rest amount shall be released in favour of the respondent no. 1 and the remaining amount shall be released in favour of the respondent nos. 2 to 6 in equal proportion, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal and the cross-objection stand disposed of. The impugned judgment and award of the learned Tribunal stands 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.**)