17.08.2023
Ct. 654
D/L 18 & 19
ab

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMAT (MV) 547 of 2022

National Insurance Co. Ltd.
-Vs-
Kalpana Khamri & Ors.

With

COT 41 of 2023

Kalpana Khamri & Anr.
-Vs-
National Insurance Co. Ltd.

Mrs. Sucharita Paul
... for the appellant-Insurance Company

Mr. Amit Ranjan Roy
... for the respondent Nos. 1 & 2 -claimants

This appeal is preferred against the judgment and award dated 23rd September, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Paschim Medinipur in MAC Case No. 459 of 2013 granting compensation of Rs. 4,57,000/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 29th October, 2013 at abour 8.00 p.m. while the victim was proceeding from his house at Parulia to Fecco Haat on bicycle keeping left side of the pitch road and when he reached near Topsia Hospital under Beliabera P.S. Distirct-Jhargam at that time the offending vehicle bearing registration No. CG-05B/5340 coming from Fecco Haat towards Gopiballavpur in a rash and negligent manner dashed the victim, as a result of which the victim sustained grievous injury and was admitted to Tapsia Block Hospital. Thereafter, the victim was shifted to Jhargram District Hospital where he succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow, married daughter and father of the deceased filed application for compensation of Rs. 5,00,000/- under Section 166 of the Motor Vehicles Act, 1988. During the pendency of the claim application, father of the deceased died and his name has been expunged from the claim application.

The claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1** to **5** respectively.

The appellant-insurance also adduced the evidence of two witnesses and produced documents, which have been marked as **Exhibits A** to **E** respectively.

By order dated 15th May, 2023, service of notice of appeal upon the respondent no. 3, owner of the offending vehicle has been 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. 4,57,000/- 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 present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred a cross objection being COT 41 of 2023.

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

Mrs. Sucharita Paul, learned advocate for the appellant-insurance company submits that this appeal has been preferred by insurance company on the solitary issue that the learned Tribunal has imposed interest on the compensation amount as a default clause at 9% per annum which is much higher than the existing banking rate of interest and, therefore, the same needs to be set aside.

Mr. Amit Ranjan Roy, learned advocate for the respondent nos. 1 & 2-claimants submits that the learned Tribunal erred in determining the income of the victim at Rs. 4,000/- per month whereas it ought to have determined the income at Rs. 6,000/- per month for calculation of just compensation. He further submits that the learned Tribunal, instead of adding future prospect to the monthly income, has granted Rs.35,000/- only towards future prospect, which is arithmetically a wrong computation. Further more, he submits that the claimants are entitled to escalation of 10% on the general damages under the conventional heads. He further submits that the learned Tribunal erred in granting interest on the compensation amount as a default clause. In the light of the aforesaid submissions, he prays for enhancement of the compensation.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the monthly income of the victim; *secondly*, whether the future prospect of 10% of the annual income of the victim be added with the income; *thirdly*, whether the claimants are entitled to escalation of 10% on general damages under the conventional heads and *lastly*, whether the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

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 at Rs.4,000/- per month of the victim. As per the evidence adduced on behalf of the claimants and statement made in the claim application, it is found that the victim at the time of accident was a cultivator. It is true that it is not possible on the part of the claimants to produce any documentary evidence in support of the income of the victim from cultivation. Be that as it may, bearing in mind the economic factors and the prices of the essential commodities prevalent in the year 2013 when the accident has taken place, I am of the view that the amount of monthly income determined at Rs. 4,000/- per month of the victim by the learned Tribunal is reasonable and does not call for interference.

With regard to the second issue relating to computation of future prospect, it is found that the learned Tribunal has allowed a sum of Rs. 35,000/- towards future prospect. The amount equivalent to 10% of annual income of the deceased towards future prospect is to be added with income for standardization.

With regard to the third issue relating to escalation on the general damages, it is found that already three years have elapsed and as such, the claimants are entitled to escalation of 10% on the general damages under the conventional heads.

Coming to the last issue relating to interest on the compensation amount, it is found that the learned Tribunal has granted interest on the compensation amount as a default clause. Ordinarily when a claim succeeds, the interest is to be given on the compensation amount from the date of filing of the claim application till the payment is made. Accordingly, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

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.4,000/-
Yearly Income (Rs. 4,000/- x 12)	Rs.48,000/-
Add: 10% of the annual income towards future prospect	Rs.4,800/-
Total income	Rs.52,800/-
Less: 1/3rd towards personal and living expenses	Rs.17,600/-
	Rs.35,200/-
Multiplier 11 (Rs.35,200/- x 11)	Rs.3,87,200/-
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.4,64,200/-

Thus, the claimants are entitled to compensation of Rs. 4,64,200/- together with interest @ 6% per annum from the date of filing of claim application (26.11.2013) till payment.

It is found that the appellant-insurance company has deposited a sum of Rs. 6,88,643/- *vide* OD Challan No. 358 dated 3rd May, 2023 and an amount of

Rs.25,000/- towards statutory deposit *vide* OD Challan No. 2556 dated 22nd November, 2022. All the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount.

Appellant-Insurance Company is directed to deposit the balance amount of compensation together with interest before the learned Registrar General, High Court, Calcutta by way of a cheque within a period of six weeks from date.

The respondent nos. 1 & 2-claimants are directed to deposit *ad valorem* Court fees on the balance mount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest in favour of the respondent nos. 1 and 2 (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.

With the aforesaid observations, the appeal as well as the Cross Objection stand disposed of. The impugned judgement 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**.)