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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 3712 of 2013
with
IA No. CAN 4 of 2018 (CAN 7057 of 2018)
with
CAN 5 of 2019 (CAN 5630 of 2019)
with
CAN 6 of 2022

The New India Assurance Co. Ltd.
Vs.
Smt. Swati Banerjee & Ors.

with

COT 53 of 2013

Smt. Swati Banerjee & Ors.
Vs.
The New India Assurance Co. Ltd.

Ms. Gopa Das Mukherjee
... For appellant no.1/Insurance Co. in FMA 3712 of 2013 & respondent in COT 53 of 2013

Mr. Rachit Lakhmani
Mr. Viswarup Acharyya
... For the claimants in FMA 3712 of 2013 & Cross-appellant in COT 53 of 2013

Mr. Parimal Kumar Pahari
... For the respondent no.7 in FMA 3712 of 2013

This appeal is directed against the judgment and award dated 30th July, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Tamluk, Purba Medinipur, in connection with MAC Case No.336 of 2007/61 of 2008 whereby the learned Judge awarded compensation to the tune of Rs.25,00,000/- though calculated final awarded sum of Rs.33,70,500/-.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of death of one Anirban Banerjee in a motor accident occurred on 2nd June, 2005 at about 5.30 to 6.00 p.m. while the victim was proceeding with a Hero Honda Motor Cycle, bearing registration no.WB-74E/1381, from Sevok Road towards Hillcart Road. At the relevant point of time, one Tata Bus, bearing registration no.WB-71/7110, approaching towards Siliguri from Alipurduar side with high speed, dashed the motor cycle from behind. In effect, said Anirban Banerjee and his colleague sustained severe injury on their person. Both of them were taken to Sunrise Nursing Home wherefrom he was referred to North Bengal Medical College and Hospital where Anirban Banerjee was declared dead. It is alleged that the accident took place due to rash and negligent driving of the Tata Bus, bearing registration no.WB-71/7110. It is further stated in the claim petition that at the relevant point of time the victim was aged about 34 years and 6 months and he was an employee of Micro Mation Private Limited as a Regional Manager (East) and he got salary of Rs.16,500/- per month from his employer. Besides his salary, he also got commission and thereby used to earn Rs.18,000/- per month. Legal heirs of the deceased, i.e., widow of the deceased and minor daughter, filed the claim petition with a prayer for compensation to the tune of Rs.25,00,000/-.

Both New India Assurance Company Limited and Oriental Insurance Company Limited in respect of both the vehicles entered appearance and contested the claim petition by filing their respective written statements denying all material averments in the claim petition contending, inter alia, that the claimants are not entitled to abnormal and unjustified claim and Insurance Companies are not liable to pay any compensation.

To prove the case, the claimants examined three witnesses, namely, Swati Banerjee, widow of the deceased, as PW-1. Amal Kumar Das, being the pillion rider of the Hero Honda Motor Cycle, was examined as PW-2, claiming himself to be an eyewitness to the accident and one Rajan Koheli, an employee of Micro Mation Private Limited company, examined as PW-3. In course of their evidence, a good number of documents were admitted as Exhibit 1 to 8, including certified copy of the First Information Report, charge sheet, seizure list, post-mortem report, PAN card, insurance certificate, bank statement etc.

Learned Judge of the Tribunal after considering the entire evidence on record together with exhibited documents, returned his finding that accidental death of Anirban Banerjee was due to rash and negligent driving of the bus and awarded compensation to the tune of Rs.25,00,000/- out of Rs.33,70,500/- after assessing monthly income of Rs.16,500/-. Learned Tribunal directed only the New India Assurance Company Limited in respect of the offending bus to pay the entire compensation.

This appeal has been preferred only on two grounds, i.e., the driver of the bus did not possess valid driving licence and, therefore, the New India Assurance Company Limited is not liable to pay compensation and on further ground that the claimants are entitled to future prospect to the extent of 40% of the income of the deceased instead of 50% in terms of fixed salary of the deceased at the time of accidental death. In support of her contention, Ms. Gopa Das Mukherjee relied on **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**.

In opposition to that, Mr. Rachit Lakhmani, learned advocate, appearing on behalf of the claimants/ cross-appellants has referred to a driving licence showing validity of the licence from 22nd April, 2003 to 21st April, 2006, i.e., the licence was valid on the date of accident happened on 2nd June, 2005. Mr. Lakhmani has further contended that the deceased was a permanent employee of Micro Mation Private Limited and in this regard he has referred to the evidence of PW-3 who deposed on behalf of Micro Mation Private Limited duly authorized by the Executive Director of the company.

With regard to the accidental death of Anirban Banerjee, I have perused the evidence of PW-2 who was a pillion rider of the motor cycle at the time of accident. He has specifically stated about the manner of accident due to rash and negligent driving of the bus. Considering that evidence together with the certified copy of FIR, charge sheet and seizure list, learned Judge of the Tribunal rightly returned his finding that Anirban Banerjee died in a motor accident by the involvement of bus, bearing registration no.WB-71/7110, due to rash and negligent driving and the bus was duly insured with the New India Assurance Company Limited.

With regard to the driving licence, I have perused the document referred to by Mr. Lakhmani and I find that the driving licence was valid at the time of accident and that apart it was further corroborated by the seizure list (Ext.-3) wherein it was written that the driving licence of the driver of the offending bus was valid up to 21st April, 2006. Therefore, the ground raised by the learned advocate for the appellant/New India Assurance Company Limited is found to be without any merit.

Coming to the second ground of appeal, I find that on behalf of the New India Assurance Company Limited Ms. Gopa Das Mukherjee, learned advocate, raised an issue of percentage of future prospect. According to her, the future prospect should be considered at the rate of 40% instead of 50% in terms of fixed salary. But on careful perusal of the evidence of PW-3, an employee of Micro Mation Private Limited, I find that he specifically testified in his evidence that he came before the Court with the letter of authorisation by the Executive Director of the company. He further stated that as per direction, he produced salary slip for the month of May, 2005 along with their bank statement duly attested by the Executive Director along with service record and original pay slip for the month of May, 2005 of the deceased Anirban Banerjee. Both the documents were marked as Exhibit-6 and Exhibit-7. In cross-examination, he denied the suggestion of fabrication thrown to him.

In **Pranay Sethi** (supra), permanent job has been interpreted by a test as follows:-

> "In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty."

It has been further held by the Hon'ble Apex Court in **Pranay Sethi** (supra) as follows:

> "We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary."

From the ratio of **Pranay Sethi** (supra), it can easily be assumed that percentage of future prospect depends on permanent job or self-employed or on fixed salary. According to **Pranay Sethi** (supra), person holding permanent job is entitled to higher percentage than a person holding fixed salary or self-employed. From the Exhibit-6, I cannot say that the deceased was drawing fixed salary. There was specifically mentioned about the date of increment and deceased's salary was increased on and from 1st April, 2005. Therefore, according to the ratio of **Pranay Sethi** (supra), claimants are entitled to future prospect to the extent of 50% of the salary of the deceased who was aged about 34 years and 6 month at the time of death.

So far as the multiplier is concerned, the deceased was aged about 34 years 6 months at the time of death involving the multiplier 16 instead of 17 according to the ratio of **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**.

Needless to mention that the claimants filed a cross appeal, being COT 53 of 2013 with a prayer for compensation assessed by the learned Tribunal at Rs.33,70,500/- though the learned Tribunal awarded a sum of Rs.25,00,000/- in terms of claim in the petition under Section 166 of the Motor Vehicles Act, 1988.

It is trite law that the learned Tribunal is duty bound to award just compensation irrespective of claim of the claimants. Therefore, award of compensation does not depend upon the claim. In the circumstances, I find no reason to reduce the award from Rs.33,70,500/- to Rs.25,00,000/- only in terms of claim of Rs.25,00,000/-.

However, considering all the facts and circumstances as discussed above, I find it necessary to determine the award afresh as under:-

Monthly Income	Rs. 16,500/-
Annual Income (Rs.16,500/- x 12)	Rs. 1,98,000/-

Add: Future prospect (@ 50%)	Rs. 99,000/-
	Rs. 2,97,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 99,000/-
	Rs. 1,98,000/-
Multiplier by 16 (as per age of the victim)	x 16
	Rs.31,68,000/-
Add: General Damages	Rs. 70,000/-
Total	Rs.32,38,000/-
Less – Awarded by ld. Tribunal	Rs.25,00,000/-
ENHANCEMENT	Rs. 7,38,000/-

For the reasons, it is seen that the claimants are entitled to the total compensation to the tune of Rs.32,38,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 21st November, 2007 till the deposit of the amount.

It is reported that the appellant/New India Assurance Company Limited already deposited Rs.25,00,000/- before the learned Registrar General of this Court and the claimants already withdrew Rs.10,00,000/- from the said amount.

Therefore, the claimants are entitled to the enhanced amount of Rs.7,38,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st November, 2007 till the deposit of the amount and the already deposited balance amount with all accrued interest.

Accordingly, the appellant/ New India Assurance Company Limited is directed to deposit the enhanced compensation amount of Rs.7,38,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 21st November, 2007 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

Therefore, the claimants are entitled to withdraw the already deposited balance amount along with all accrued interest and the enhanced compensation with interest.

The learned Registrar General is requested to disburse the already deposited balance amount along with all accrued interest and the enhanced compensation with interest to be deposited by the appellant/New India Assurance Company Limited within six weeks from date to the claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 3712 of 2013 and the Cross-Objection, being COT 53 of 2013, are disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)