IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

30.01.2023
SL No.14
Court No. 654
Ali

F.M.A.T. 555 of 2021
IA No:CAN/1/2022

Ashalata Das & Ors.
Vs.
United India Insurance Co. Ltd. & Anr.

Mr. Subhankar Mandal
....for the appellant-Insurance Co.

Mr. Sanjay Paul
...for the respondent No.1-Insurance Co.

This appeal is directed against the judgment and award dated 24 March 2017 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 4th Court, Paschim Medinipur in M.A.C Case no. 40 of 2015 under Section 166 of the Motor Vehicles Act, 1988 granting compensation of Rs. 19,91,532/-together with interest in favour of the claimants.

The brief fact of the case is that on 17 September, 2014 at about 10:30 AM while the victim was proceeding towards the market and reached near Fatehpur Bus Stand at that time the offending vehicle bearing registration no. WB-33C/2764 (Bus) coming from opposite direction in excessive high-speed and in rash and negligent matter dashed the victim, as a result of which the victim sustained grievous injuries all over his body and head. The local people immediately shifted the victim to

Mundamari Nivedita Nursing Home but as his condition deteriorated he was shifted to M.M.C.H wherefrom he was referred to S.S.K.M. Hospital, Kolkata where he succumbed to his injuries and died on 23.9.2014 at about 1:45 AM. On account of sudden demise of the victim, the claimants being the widow, son and mother filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 25,00,000/-together with interest.

The claimants in order to establish their case examined two witnesses including son of the deceased and produced number of documents which are marked as **Exhibits 1 to 8** respectively.

The respondent no.1-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence produced on behalf of the claimants, the learned tribunal granted compensation of Rs. 19,91,532/-together with interest 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 the appellants-claimants have preferred the present appeal.

Mr Subhankar Mandal, learned advocate for appellants-claimants submits that the learned tribunal erred in adopting multiplier of 13 instead of

14 since at the time of accident the victim was 45 years eight months old. He further submits that the deceased-victim at the time of death was a permanent employee under Department of Land & Land Reforms, Government of West Bengal and therefore the claimants are entitled to an additional amount equalling to 30% of the annual income of the deceased victim. Moreover, the claimants are also entitled to general damages under the conventional heads of Rs.70,000/-. In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply, Mr Sanjay Paul, learned advocate for respondent no.1-insurance company opposes the prayer for enhancement of compensation amount.

By order dated 19 January 2023 service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with since he did not contest the claim application before the learned tribunal.

Having heard the learned advocate for the respective parties, it is found that the appellants claimants in the present appeal has precisely raised three-fold grounds, *firstly,* that the multiplier should be 14 instead of 13; *secondly,* the claimants are entitled to an additional amount of 30% of annual income of the deceased-victim towards future prospect and lastly the claimants are entitled to general damages of Rs.70,000/-under the conventional heads.

With regard to the first issue regarding multiplier, it is found that the learned tribunal adopted multiplier of 13. However, since at the time of death the victim was aged 45 years and eight months, following the observation of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298*** the multiplier should be 14 instead of 13.

As regards future prospect, it is found that the victim at the time of accident was permanent employee under the Department of Land and Land Reforms Office, Government of West Bengal and was 45 years and eight months old and therefore in view of the decision of Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** an additional amount equalling to 30% of the annual income of the deceased-victim should be taken into account for assessment of compensation.

With regard to the general damages following the observation of Hon'ble Supreme Court in ***Pranay Sethi's Case (supra)*** the claimants are entitled to general damages under the conventional heads of funeral expense, loss of consortium and loss of estate amounting to Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

Keeping in mind the above factors, the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income...Rs.17,808/-

Annual Income.....(Rs.17,808/- X 12).........Rs2,13,696/-

Add: Future Prospects @ 30% of total Income..Rs.64,109/-Approx.

Annual loss of Income................... Rs.2,77,805/-Approx

Less: Deduction of 1/3rd of the Annual Income

(towards personal and living expenses)........... Rs.92,602/-Approx

Rs.1,85,203/-

Adopting multiplier 14 (Rs.1,85,203/- X 14)...Rs.25,92,842/-

Add: General Damages............................ Rs.70,000/-

Total Compensation...........................Rs.26,62,842/

Thus, the total compensation comes to Rs.26,62,842/-.Admittedly the claimants have received an amount of Rs.19,91,532/-together with interest as awarded by the learning tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.6,71,310/-along with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 19.1.2015) till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.6,71,310/-along with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 19.1.2015) till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation, if not already paid.

Upon deposit of the aforesaid balance amount of compensation learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellants-claimants in equal proportion on satisfaction of their identity and payment of *ad valorem* court fees on the balance amount of compensation, if not already paid.

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

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 the given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)