17.04.2023
Ct. no.654
Sl. Nos.108 & 109
ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

F.M.A. 1201 of 2022
C.A.N. 1 of 2019 (old No. CAN 6800 of 2019)

Shriram General Insurance Co. Ltd.
Versus
Lalita Mondal & ors.

With

F.M.A. 1202 of 2022
CAN 1 of 2019 (old No. CAN 11921 of 2019)

Lalita Mondal & ors.
Vs.
Shriram General Insurance Co. Ltd.

Mr. Rajesh Singh
... for the appellants-Insurance Co.
in F.M.A.1201 of 2022

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
... for the appellants-claimants
in F.M.A. 1202 of 2022

Mr. Parimal Kumar Pahari
... for the respondent no.8-ICICI
Lombard General Insurance co. Ltd.

Both these appeals have been preferred against the judgement and award dated 29th March, 2019 passed by the Learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Raiganj, Uttar Dinajpur in M.A.C. Case No.162 of 2016 granting compensation in favour of the widow and the minor children of the deceased-victim to the tune of Rs.4,15,500/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

Informal paper book filed by the appellants-claimants in F.M.A. 1202 of 2022 is taken on record.

The brief fact of the case is that on 15th June, 2016 about 2:00 hours while the victim was carrying ginger on a hired vehicle bearing registration no. WB-65B/9713 (pick-up van) from Raiganj through NH 34 and when it reached near Gothlu More it hit another vehicle bearing registration no.WB-65B/9280 (truck) which was parked on the pucca road. Due to said accident the victim and the driver of the vehicle bearing registration no.WB-65B/9713 (pick-up van) sustained severe injuries. The victim died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor children and the father of the deceased filed application for compensation of Rs.4,50,000/- together with interest.

The claimants in order to establish their case, examined one witness and produced documents which were marked as **Exhibits 1** to **16,** respectively.

The Insurance Company, Shriram General Insurance Company Limited, insurer of truck bearing registration no. WB-65B/9280 (truck), also adduced the evidence of one witness and produced documents, which have been marked as **Exhibits A** and **B**, respectively.

Owners of both the vehicles, i.e., respondent nos.6 and 7 did not contest the claim application. For that reason, the service of notice of appeal upon the said respondents is dispensed with.

The respondent no.8, ICICI Lombard General Insurance Company Limited, insurer of the pick-up van bearing registration no. WB-65B/9713, contested the claim application but no award has been passed against the said Insurance Company.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation to the tune of Rs.4,15,500/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act and directed the insurer of truck to satisfy such award.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the Insurance Company, namely, Shriram General Insurance Company Limited has preferred the appeal being No.F.M.A.1201 of 2022.

Challenging the award passed by the learned Tribunal, the claimants also preferred appeal being F.M.A. No.1202 of 2022 for enhancement of compensation amount.

Both these appeals are taken up together for consideration and disposal.

Mr. Rajesh Singh, learned Advocate for the Shriram General Insurance Company Limited, the appellant in

F.M.A.1201 of 2022, submits that since two vehicles were involved in the said accident, the compensation awarded by the learned Tribunal should have been apportioned between the insurers of the two vehicles. He further submits that following the Second Schedule of the Act the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/4th and the general damages should be Rs.9,500/- instead of Rs.10,500/- granted by the learned Tribunal.

Mr. Subir Banerjee, learned Advocate for the appellants-claimants in F.M.A. No.1202 of 2022 submits that since at the time of accident the deceased was 36 years of age, following the Second Schedule the multiplier should have been 16. He further submits that the accident having taken place in the year 2016, the income ought to have been considered by the learned Tribunal at the rate of Rs.3,300/- per month.

Having heard the learned Advocates for the respective parties following issues have fallen for consideration in the present appeal. *Firstly*, whether the learned Tribunal was justified in directing the insurer of vehicle bearing registration no.WB-65B/9280 (truck) to satisfy the award without apportioning the same between the insurers of the two vehicles, *secondly*, whether the deduction towards personal and living expenses should be 1/3rd and general damages should be Rs.9,500/-, *thirdly*, whether the learned Tribunal should have considered the income of the deceased at the rate of Rs.3,300/- per month.

So far as the first issue is concerned, before delving into the merit of the issue and for convenience of discussion, it would be profitable to refer to Section 163A of the Act which is reproduced hereunder:-

> *"163A. Special provisions as to payment of compensation on structured formula basis –*
> *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*
> *(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."*

The provision of Section 163A of the Act as aforesaid clearly enshrines, in claim under such provision the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

Thus, since this is an application under Section 163A of the Motor Vehicles Act the question of negligence cannot be gone into. The question of apportionment of compensation amount between two insurers depends on the extent of negligence of each of the vehicles involved in the accident, however, such factor cannot be arrived at by the Court while dealing with an application under Section 163A of the Act. Accordingly, the submissions advanced by Mr. Rajesh Singh, learned Advocate on behalf of the Shriram General Insurance Company Limited, cannot be accepted.

So far as the deduction towards personal and living expenses of the deceased is concerned, it is found that the learned Tribunal deducted 1/4th of the income of the deceased towards personal and living expenses. However, following the Second Schedule of the Act, the deduction towards personal and living expenses should be 1/3rd instead of 1/4th.

With regard to the general damages the learned Tribunal has taken into account Rs.10,500/- which should be Rs.9,500/- under the conventional heads namely loss of estate, loss of consortium and funeral expenses in terms of Second Schedule of the Act.

The multiplier should be 16 since at the time of accident the victim was 36 years of age.

So far as the income of the victim is concerned since the accident took place in the year 2016 the income is to be considered at the rate of 3,300/- per month.

Bearing in mind the aforesaid observations, the compensation is calculated hereunder:

<u>Calculation of Compensation</u>

Monthly Income	Rs.3,300/-
Annual Income (Rs.3,300/- X12)	Rs.39,600/-
Less : Deduction of 1/3rd	<u>Rs.13,200/-</u>
	Rs.26,400/-
Multiplier '16' (Rs.26,400/- X 16)	Rs.4,22,400/-
Add : General damages –	<u>Rs.9,500/-</u>
	Rs.4,31,900/-

Thus, the total compensation comes to Rs.4,31,900/- which will carry interest @ 6% per annum from the date of filing of the claim application till realisation.

It is found that the Insurance Company namely Shriram General Insurance Company Limited has deposited statutory amount of Rs. 25,000/- before the registry of this Court vide OD Challan No. 849 dated 17.07.2019 as well as Rs. 5,86,411/- vide OD Challan No. 1925 dated 19.09.2022 in terms of order of this Court dated 22nd August, 2022.

Both the aforesaid amount together with accrued interest be adjusted against the total compensation amount.

The balance, if any, shall be paid by the Insurance Company.

Further, any amount in excess after satisfaction of the award should be refunded to the Insurance Company.

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

Learned Registrar General, High Court, Calcutta shall disburse the compensation amount in favour of the claimants-appellants (in FMA 1202 of 2022) in equal share after making payment of Rs.5,000/- towards loss of consortium in favour of the widow of the deceased, the appellant no.1, upon satisfaction of their identity and payment of *ad valorem* court fees on the compensation amount, if not already paid.

The appellant no.1 (in FMA 1202 of 2022), mother and natural guardian of appellant nos.2, 3 and 4 being the minor children, shall receive the share of the minor children on their behalf and shall keep the share of the minor children in fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minor children.

With the above observations, both the appeals stand disposed of.

No order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)