07.07.2023
Ct. 654
D/L 6 & 7
ab

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMAT 661 of 2017

Bajaj Allianz General Insurance Co. Ltd.
-Vs-
Smt. Shyamali Das & Ors.
With
COT 26 of 2021

Smt. Shyamali & Anr.
-VS_
Bajaj Allianz General Insurance Co. Ltd & Anr.

Mr. Rajesh Singh
... for the appellant-insurance company

Mr. Jayanta Banerjee,
Mr. Rakib Hussain
... for the respondents -claimants

Challenging the award of the learned Motor Accident Claims Tribunal, Jalpaiguri dated 23rd June, 2016 passed in MAC Case No. 15 of 2015 under Section 166 of the Motor Vehicles Act, 1988, the insurance company preferred the present appeal. Incidentally, on 14th May, 2022, the appeal was withdrawn by the insurance company before the National Lok Adalat.

During the pendency of this appeal, the respondents-claimants filed cross objection being COT 26 of 2021.

It is trite law even when appeal is withdrawn, cross-objection can still be heard and determined. Accordingly, the cross-objection of respondents-claimants is taken up for consideration.

At the very outset, Mr. Jayanta Banerjee, learned advocate for the cross-appellants (claimants) prays leave to incorporate the name of Sukhen Das, minor son of the deceased, who has not been made a party in cross-objection though he was a necessary party before the learned Tribunal.

Leave is granted to incorporate the name of the minor son of the deceased namely, Sukhen Das in the memorandum of cross objection as the cross appellant no. 3.

Mr. Rajesh Singh, learned advocate for the insurance company submits that although the insurance company has withdrawn the appeal, however, it is entitled to take up all contentions in support of the judgment of the learned Tribunal appealed against, in the cross-objection of the claimants. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Hari Shankar Rastogi versus Sham Manohar and Others*** reported in ***(2005) 3 SCC 761***. In the aforesaid decision, the Hon'ble Supreme Court observed as follows:

> *"8. In this view of the matter, we set aside the impugned judgment and remit the cross-objections back to the High Court for disposal on merits. The*

> *respondent, herein will be entitled to take up all contentions in support of the judgment appealed against, even though he may have withdrawn his appeal."*

Bearing in mind the aforesaid, opportunity is given to the insurance company to take up all contentions in support of the judgment of the learned Tribunal.

The brief fact of the case is that on 14th November, 2014 at about 7/7.30 p.m. while the victim was proceeding to his house at that time the offending vehicle bearing registration No. WB-73(B)/5625 dashed the victim near Ethelbari Chowpathi under Birpara P.S. in a rash and negligent manner resulting in multiple injuries to the victim and he died at the spot. On account of sudden demise, the claimants being the widow, minor daughter and minor son filed application for compensation of Rs. 7,99,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The cross-appellants (claimants) in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1** to **7** respectively.

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

Since cross-respondent no.2-owner of the offending vehicle did not contest the claim application before the learned Tribunal, hence service of notice of cross-objection is dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.4,10,000/- in favour of the claimants under Section 166 of the Motor Vehicle Act, 1988 with a direction to satisfy the award within two months, in default, the compensation amount is to carry interest @ 9% per annum.

Being aggrieved by and dissatisfied with the impugned judgment and award, the claimants filed the cross objection in the appeal of the insurance company *(which was subsequently withdrawn before the National Lok Adalat on 14th May, 2022).*

Mr. Banerjee, learned advocate for the cross-appellants (claimants) submits that since the accident has taken place in the year 2014, the monthly income of the victim should be taken at Rs. 4,000/- per month instead of Rs. 3,000/- per month considered by the learned Tribunal. He also submits that the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect and further Rs. 70,000/- towards general damages under the conventional heads. He further, in his usual fairness, submits that the multiplier should be 16 instead of 17.

Mr. Singh, learned advocate for cross-respondent no.1 (Insurance Company), opposing the prayer of the claimants for enhancement, submits that since no cogent evidence has been produced on behalf of the claimants, the learned Tribunal rightly determined the monthly income of the deceased at Rs. 3,000/- per month. He further submits that the order the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration in this cross-objection. *Firstly*, whether the learned Tribunal erred in determining the monthly income of the deceased; *secondly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect; *thirdly* whether the claimants are entitled to general damages of Rs. 70,000/- under the conventional heads and *lastly*, whether the multiplier should be 16 instead of 17 adopted by the learned Tribunal.

With regard to the first issue, it is found that the learned Tribunal considered the income of the victim at Rs. 3,000/- per month. However, since the accident has taken place in the year 2014, keeping in mind the economic factors and prices of essential commodities prevalent during the said period and also bearing in mind the catena of decisions of this Hon'ble Court, the income of the victim is considered at Rs. 4,000/- per month.

Since at the time of accident, the victim was 34 years of age and was self-employed, following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

Further, following the observations made in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

So far as multiplier is concerned, it is found that the learned Tribunal has adopted multiplier 17. However, since at the time of accident, the victim was 34 years of age, 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 16.

No other factors have been challenged in the cross-objection.

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

Calculation of Compensation

Monthly income	Rs. 4,000/-
Annual income (Rs. 4,000/- x 12)	Rs. 48,000/-
Add: 40% of the annual income towards future prospect	Rs. 19,200/-
	Rs. 67,200/-
Less: 1/3rd towards personal and living expenses	Rs. 22,400/-
	Rs. 44,800/-
Multiplier 16 (Rs. 44,800/- x 16)	Rs. 7,16,800/-
Add: General Damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs. 70,000/-
Total compensation	Rs. 7,86,800/-

Thus, the claimants are entitled to compensation of Rs. 7,86,800/- together with interest @ 6% per annum from the date of filing of the claim application till payment. It is informed that the claimants have already received the compensation amount of Rs. 4,10,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to principal balance amount of compensation of Rs. 3,76,800/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

The insurance company is directed to make necessary calculations towards the amount to be paid to the claimants taking into consideration the amount already paid to them.

The insurance company is also directed to deposit the balance amount of compensation together with interest as indicated hereinabove by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Upon deposit of the balance amount of compensation and the interest indicated hereinabove, the learned Registrar General, High Court, Calcutta shall release the compensation amount in favour of the claimants in equal proportion, after making payment of Rs. 40,000/- to cross-appellant no. 1, widow of the deceased, towards spousal consortium and upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The cross-appellant no. 1, being the mother and natural guardian of the cross-appellant nos. 2 & 3, shall receive the share of the minors on their behalf and shall keep the same in a Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minors.

With the aforesaid observations, the cross objection being COT 26 of 2021 stands 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**.)