

16.02.2023
SL No.4
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 3356 of 2015

**Smt. Bhanumati Pal & Ors.
Vs.
I.C.I.C.I. Lombard General Insurance
Company Ltd. & Anr.**

Mr. Jayanta Kumar Mandal
....for the appellants-claimants.

Mr. Parimal Kumar Pahari
....for the respondent No.1-Insurance Co.

This appeal is preferred against the judgement and award dated 23rd February, 2015 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Rampurhat, Birbhum in M.A.C. Case no. 36 of 2013 granting compensation of Rs.2,20,700/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 8th April, 2013 at about 6 AM while the victim was proceeding towards Sainthia by riding on bicycle through Berhampore-Sainthia Road and when he reached near Gumtadanga-Jogindrar Jha's Grocery shop at that time the offending vehicle bearing registration no. WB-37C/6362 in a rash and negligent manner dashed the victim as a result of which he sustained bleeding injuries and fell down on the road. The local people shifted the victim to Sainthia Hospital and was later taken to S.S.K.M.

Hospital where the victim succumbed to his injuries and died on 17th April, 2013 at 8:45 AM. On account of sudden demise of the victim, the claimants the widow, son, daughters of the deceased filed application for compensation of Rs.3,00,000/-under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents which have been marked as **Exhibits 1 to 11** respectively.

Respondent no.1-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs.2,20,700/- 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 passed by the learned tribunal, the claimants have preferred the present appeal.

Mr Jayanta Kumar Mandal, learned advocate for appellants-claimants submits that the learned tribunal erred in deducting one-third towards personal and living expenses of the deceased whereas it ought to have deducted one-fourth on such head since at the time of accident

the deceased had four dependents. He further submits that since at the time of accident the deceased was 56 years of age hence, the multiplier of 9 is to be adopted for computing the compensation amount. Furthermore, he submits that the claimants are also entitled to an additional amount equalling to 10% of the annual income of the deceased towards future prospect as well as general damages of Rs.70,000/-with escalation of 10% on such amount. He further submits that the learned tribunal did not grant any interest on the compensation amount and the interest has been granted as a default clause which needs to be modified. In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

Mr Parimal Kumar Pahari, learned advocate for respondent no.1-insurance company submits that the principles enunciated by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **2017 ACJ 2700** be followed for computation of compensation amount.

In spite of due service of notice, respondent no.2-owner of the offending vehicle is unrepresented.

Having heard the learned advocates for the respective parties, it is found that the claimants

have precisely raised the following grounds, *firstly*, that the deduction towards personal and living expenses of the deceased should be one-fourth instead of one-third since at the time of accident the deceased had four dependents; *secondly*, the multiplier should be 9 instead of 8 as adopted by the learned tribunal; *thirdly* the claimants are entitled to an additional amount equalling to 10% of the annual income of the deceased towards future prospect; *fourthly* the claimants are entitled to general damages of Rs.70,000/-together with escalation of 10% of such amount and *lastly*, that the claimants are entitled to interest on the compensation amount.

With regard to the first issue relating to deduction towards personal and living expenses of the deceased, it is found that the learned tribunal deducted one-third on such head. It is undisputed that the deceased had four dependents at the time of his death and therefore 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 deduction towards personal and living expenses of the deceased should be one-fourth instead of one-third.

So far as the second issue is concerned regarding multiplier, it is found that the learned tribunal has adopted multiplier of 8. From the

impugned judgement it appears that the learned tribunal determined the age of the victim to be 56 years at the time of accident. Bearing in mind the age of the victim and the observation of Hon'ble Supreme Court in ***Sarla Verma's case (supra)*** the multiplier to be adopted should be 9 instead of 8.

With regard to the third issue of entitlement of future prospects, since at the time of accident the victim was aged 56 years and was self-employed, hence, following the observation of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** the claimants are entitled to an additional amount equalling to 10% of the annual income of the deceased towards future prospect.

Following the aforesaid observation of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***, the claimants are also 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. The claimants are also entitled to escalation of 10% on the general damages, since three years have already lapsed.

The other factors and findings of the learned tribunal has not been challenged in the present appeal. Keeping in mind the aforesaid factors the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income.....	Rs.3,300/-
Annual Income..(Rs.3,300/- X 12).....	Rs. 39,600/-
Add: 10% of total Income	
towards future prospect.....	<u>Rs.3,960/-</u>
Annual loss of Income.....	Rs.43,560/-
Less: Deduction 1/4 th of the	
Annual Income towards personal	
and living expenses.....	<u>Rs.10,890/-</u>
	Rs.32,670/-
Adopting multiplier 9 (Rs.32,670/- X 9)..<	Rs.2,94,030/-
Add: General Damages.....	Rs.70,000/-
Loss of estate....	Rs.15,000/-
Loss of Consortium....	Rs.40,000/-
Funeral Expenses.....	Rs.15,000/-
Add: 10% towards increase	
in general damages.....	<u>Rs.7,000/-</u>
Total Compensation.....	Rs.3,71,030/-

Thus, the claimants are entitled to compensation of Rs.3,71,030/-together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit. It is found that the claimants have already received the compensation of Rs.2,20,700/-granted by the learned tribunal. However, the claimants have not received any interest on the amount granted by the learned tribunal. Accordingly, the claimants are entitled to interest at the rate of 6% per annum on the compensation amount of Rs.2,20,700/-from the date of filing of the claim application till deposit was made before the learned tribunal on 6.5.2015. Appellants-claimants are also entitled to balance amount of compensation of Rs.1,50,330/-together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.1,50,330/-together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit and the interest on the compensation granted by the learned tribunal as indicated above, 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 balance amount of compensation and the interest as indicated above, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of appellants-claimants, after making payment of Rs.44,000/- in favour of appellant no.1-widow of the deceased towards spousal consortium, in equal proportions subject to satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

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

All connected applications if any, stands disposed of.

Interim order if any stands vacated.

Let a copy of this order along with lower court records be forwarded to the learned tribunal for information.

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

(Bivas Pattanayak, J.)