13.01.2023
SL No.9
Court No. 654
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 377 of 2022
IA No: CAN/1/2022

Sucharita Ray & Ors.
Versus
Royal Sundaram General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
...for the appellants-claimants.
Mr. Rajesh Singh
.....for the respondents-Insurance Co.

This appeal is directed against the judgment and award dated 22nd of February 2021 passed by learned Judge, Motor Accident Claims Tribunal, 3rd court, Nadia, Krishnagar in M.A.C Case no. 220 of 2019 under Section 166 of the Motor Vehicles Act, 1988 granting compensation of Rs.5,40,000/- in favour of the claimants along with interest.

With the consent of the parties the calling for of lower court records and preparation of informal paper books are dispensed with.

The brief fact of the case is that on 10 June 2019 at about 12:30 hours while the victim was coming towards Bethuaduari from Harinarayanpur on his motorcycle bearing registration no. WB-52AN/6094 alongwith his son as a pillion rider and when he reached near Nowbhanga Village at that time the offending vehicle bearing registration no.WB-52AP/4228 (tractor) which was coming from opposite direction dashed the motorcycle of the victim in a rash and negligent manner as a result of which the victim and his son fell down and they sustained injuries over their body. The local people shifted them Bethuadahari Hospital where the attending doctor declared the victim as dead. On account of sudden demise of the deceased-victim the claimants being the widow, son, mother and father filed application for compensation under section 166 of the Motor Vehicles Act, 1988.

Initially the claim application was allowed in favour of the claimants including father of the deceased but after delivery of the judgment upon application by the claimants informing death of the father on 9.6.2021 his name has been expunged by the learned tribunal. The present appeal has been filed by the rest of the claimants namely the widow, son and the mother of the deceased.

Upon consideration of materials on record and the evidence adduced by the claimants the learned tribunal granted compensation in favour of appellants-claimants to the tune of Rs. 5,40,000/- along with interest.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants filed the present appeal.

Mr Saidur Rahaman, learned advocate for appellants-claimants submits that the learned tribunal erred in adopting multiplier of 11 instead of

13 since at the time of accident the deceased victim was 50 years of age. He further submits that the claimants are also entitled to an amount equalling to 10% of annual income of the deceased towards future prospect. Moreover, he submits that the claimants are also entitled to general damages of Rs. 70,000/- under the conventional heads. He fairly submits that since the learned tribunal expunged the name of the father of the deceased hence the deduction towards personal living expenses of the deceased should be 1/3rd of the annual income of the deceased instead of 1/4th. In light of his aforesaid submissions he prays for enhancement of the compensation amount.

Mr Rajesh Singh, learned advocate for respondent no.1-insurance company opposes such prayer for enhancement. He also submits that the deduction towards personal living expenses of the deceased should be 1/3rd of the annual income of the deceased instead of 1/4th.

Since respondent no.2-owner of the offending vehicle did not contest the claim application before the learned tribunal and the case was disposed of *exparte* against him hence service of notice of appeal upon the said respondent is dispensed with.

Having heard the learned advocates of respective parties, I now proceed to decide the issues involved in the present appeal. The appellant in this appeal has precisely raised three issues for enhancement of compensation amount, *firstly* the multiplier should be 13 instead of 11; *secondly* the claimants are entitled to general damages of Rs. 70,000/- and *lastly* the claimants are entitled to an amount equalling to 10% of annual income of the deceased-victim towards future prospect.

With regard to the first issue, it is found that the learned tribunal has adopted multiplier 11. However since at the time of accident the deceased-victim was 50 years old hence 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 13 instead of 11.

Following the observation of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others reported in 2017 (4) T.A.C 673(S.C)*** the claimants are entitled to general damages under the conventional heads of loss of estate, funeral expenses and loss of consortium of Rs. 15,000/-, Rs. 15,000/- and Rs. 40,000/- respectively.

Further as per observation of Hon'ble Supreme Court in ***Pranay Sethi's case***, as the victim was self-employed and 50 years of age hence an amount equalling to 10% of the annual income of the deceased towards future prospect should be taken into account.

Since the number of dependents is three and the deceased was married, following the principles laid down in ***Sarla Verma's case*** an amount equalling to 1/3rd of annual income of the deceased-victim should be deducted towards personal and living expenses of the deceased.

The other findings of the learned tribunal with regard to income have not been challenged in the appeal.

Bearing in mind the aforesaid aspects the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income...Rs.5,000/-
Annual Income.....(Rs.5,000/- X 12)............ Rs60,000/-
Add: Future Prospects @ 10% of total Income..Rs.6,000/-
Annual loss of Income................................Rs.66,000/-
Less: Deduction of 1/3rd of the Annual Income
(towards personal and living expenses)........... Rs.22,000/-
Rs.44,000/-
Adopting multiplier 13 (Rs.44,000/- X 13)...Rs.5,72,000/-
Add: General Damages..............................Rs.70,000/-
Loss of estate.............Rs.15,000/-
Loss of consortium......Rs.40,000
Funeral Expenses.......Rs.15,000
Total Compensation............................Rs.6,42,000/-

Thus the claimants are entitled to compensation amount of Rs.6,42,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit. It is submitted on behalf of the claimants that they have not received any amount of compensation as per order of the learned tribunal.

Respondent no.1-insurance company is directed to deposit the amount of compensation of Rs.6,42,000/-together with interest at the rate of 6% per annum from the date of filing of the claim application 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 amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants, after making payment of Rs. 40,000/- as spousal consortium to appellant no.1, widow of the deceased, in equal proportion and upon payment of *ad valorem* court fees and satisfaction of identity of the claimants.

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

All connected applications if any stands disposed of.

Interim orders if any stands vacated.

Urgent photostat certified copy if applied for by the parties shall be delivered upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)