12.10.2023
Ct. 654
D/L 167
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 751 of 2023

The New India Assurance Co. Ltd.
-Vs-
Rina Das & Anr.

Mrs. Sucharita Paul
... for the appellant-Insurance Company

Mr. Jayanta Kumar Mandal
... for the respondent no. 1 -claimant

This appeal is preferred against the judgment and award dated 31st March, 2023 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Durgapur, Paschim Bardhaman in MAC Case No. 90 of 2015 granting compensation of Rs. 13,73,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th May, 2014, in between 8.00 a.m to 8.30. a.m. while the victim was proceeding towards Durgapur Station from Shyampur by riding a motorcycle bearing registration No. WB-68N/3885 through Bankura Durgapur road and when he reached near Sramik Nagar More, at that time the offending vehicle bearing registration No. WGT-2852 (Mini Bus) proceeding in the same direction dashed the motorcycle of the victim in a rash and negligent manner, as a result of which the victim sustained grievous injuries. Immediately, the local people shifted the victim to Durgapur SD Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the mother of the victim filed application for compensation of Rs. 10,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined herself and two witnesses and also produced documents, which have been marked as **Exhibits 1** to **8** respectively.

The appellant-insurance company did not adduce any evidence.

By order dated 31st August, 2023, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 13,73,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

Mrs. Sucharita Paul, leaned advocate for the appellant-insurance company submits that the leaned Tribunal erred in determining the income of the victim at Rs. 8,000/- per month and failed to take into account that the avocation and the income claimed by the claimant has not been proved by cogent evidence. The employer of the victim who would have been the best evidence to prove the income of the victim has not been examined. Since, the accident has taken place in the year 2014, the income of the victim at best can be considered at Rs. 4,000/- per month. She further submits that the learned Tribunal erred in allowing filial the consortium in favour of the mother of the victim. Moreover, the learned Tribunal allowed future prospect of 50% of the annual income of the victim, which should be 40% in view of decision of the Hon'ble Supre Court passed in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in ***2017 (16) SCC 680.*** She further submits that the rate of interest on the compensation amount should be scaled down in view of the prevailing banking rate of interest. In view of her aforesaid submissions, she prays for modification of the impugned judgment and award of the learned Tribunal.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Jayanta Kumar Mandal, learned advocate for the respondent no. 1-claimant submits that the claimant produced salary certificate of the victim issued by his employer before the learned Tribunal but that has not been exhibited and has been marked as “X” for identification. Relying on the decision of the Hon’ble Supreme Court passed in ***Vimla Devi and Ors. versus National Insurance Company Limited and Ors***., reported in ***(2019) 2 SCC 186***, he submits that if the Court did not exhibit the document despite the claimant referring the same at the time of recording of evidence, then in such event the claimant cannot be denied of her right to claim compensation on such ground. He further submits that the evidence of P.W. 1 Rina Das, mother of the victim stating that the income of the victim was Rs. 8,040/- per month has not been challenged in cross-examination and, therefore, such unchallenged evidence of the mother of the victim should be taken into consideration. To buttress his contention, he relies on the decision of this Court passed in ***FMA 1193 of 2021 with I.A. No. CAN 1 of 2022 (The Oriental Insurance Co. Ltd versus Chhabi Dey & Ors.)***. He also submits that bearing in mind the minimum wages payable to a skilled labour in ‘Zone A’, the income determined by the learned Tribunal should not be interfered with. He further draws the attention of the Court to the fact that the claimant is a widow and was dependent on the victim who was the sole earning member of the family and, therefore, the income assessed is reasonable and appropriate in the facts and circumstances of the case. So far as the other issues relating to grant of consortium, future prospect and rate of interest, he leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the victim; *secondly*, whether the learned Tribunal is justified in granting filial consortium in favour of the mother of victim; *thirdly* whether the learned Tribunal erred in granting future prospect of 50% of the annual income of the victime and *lastly*, whether the rate of interest on the compensation amount needs to be scaled down from 8% per annum.

With regard to the first issue relating to determination of income of the victim, it is found that the learned Tribunal has determined the income of the victim at Rs. 8,000/- per month. The claimant in her claim application has contended that her deceased son used to work at *"M/s Shankar & Brothers"* as plumber fitter and his monthly income was Rs. 8,040/- per month. P.W. 1 Rina Das (claimant), mother of the victim in her evidence-in-chief also stated of such fact. P.W. 1 also produced the income certificate issued by *"M/s Shankar & Brothers"* dated 25th August, 2014, which was marked by the learned Tribunal as "X" for identification. Mr. Mandal, learned advocate for the respondent no. 1-

claimant relying on *Vimla Devi (supra*) tried to impress upon the Court that such document should have been taken into consideration by the learned Tribunal since that was referred to in evidence by the claimant. Upon going through the judgment of the Hon'ble Supreme Court in *Vimla Devi (supra*), the document referred to is not in respect of any income certificate. Thus, the fact of the cited decision is distinguishable from the case at hand. It is relevant to note that the income certificate issued by claimant has not been proved by the employer or the authority, which issued such certificate. The claimant in order to establish the income of the victim examined one Bipon Lohar as P.W. 3. This witness deposed that the victim used to work as plumber fitter along with him in *"M/s Shankar & Brothers"* at DPL Township Side. Be that as it may, from the evidence of P.W. 3, it reveals that he has stated of his income only as has been rightly pointed out by Mrs. Paul, learned advocate for the appellant-insurance company. The evidence of P.W. 3 never disclose the income of the victim. The best person, who could have deposed of the avocation and income of the victim, is the employer of the victim himself. The claimant though averred of the avocation of the victim with *"M/s Shankar & Brothers"* at DPL Township but has failed to examine his employer to establish the same. Such being the position, the avocation and the income of the victim has not been established by the claimant. Mr. Mandal, learned advocate for the respondent no. 1-claimant relying on *Chhabi Dey (supra)* has strenuously argued that since the evidence of P.W. 1 deposed in respect of income of the victim has not been challenged in cross-examination, such income should be taken into account. Upon going through the decision passed in *Chhabi Dey (supra)* it is found that the deceased used to run the business under the name and style of "*Dey Misthanya Bhander*" and on considering such aspect, the income was considered as deposed by the witness. Thus, the decision in *Chhabi Dey (supra)* is factually distinguishable. Since the avocation has not been proved, the arguments advanced referring to the minimum wages payable also fall short of merit. It is found that the income of the victim claimed by the claimant appears to be exorbitant. In the case of ***Sri Ramachandrappa versus The Manager, Royal Sundaram Alliance Insurance Company Limited*** reported in ***(2011) 13 SCC 236*** the Hon'ble Supreme Court observed as follows:

> *"14. . . . We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time. . . ."*

Bearing in mind the aforesaid proposition and resorting to some guesswork, since the accident has taken place in the year 2014, the income of the victim is considered at Rs. 4,000/- per month keeping in mind the economic factors and the cost of essential goods prevalent at that period of time.

With regard to second issue relating to grant of filial consortium in favour of the claimant, it is found that the learned Tribunal has granted Rs. 44,000/- towards filial consortium in favour of the mother. In order to appreciate the aforesaid issue, it would be relevant to reproduce the paragraph nos. 46 and 52 of the decision of the Hon'ble Supreme Court in *Pranay Sethi (supra)* hereinbelow:

> *"46. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh*

Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-

> *"17. … In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non- pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."*

x x x x x

52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh, 2013 ACJ 1403 (SC). It has granted Rs. 25,000/-towards funeral expenses, Rs.1,00,000/-for loss of consortium and Rs.1,00,000/-towards loss of care and guidance to minor children. The head relating to loss of care to minor children does not exist. Though the Rajesh (supra) refers to Santosh Devi, 2012 ACJ 1428 (SC), it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that a rise in price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. The principle of re-visiting the said heads is an acceptable principle. But the re-visit should not be fact- centric or quantum- centric. We think that it would be condign that the amount we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10 per cent in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

Bearing in mind the above, the grant of filial consortium in favour of the mother of the victim is liable to be set aside.

So far as the future prospect is concerned, it is found that the learned Tribunal has granted an amount equivalent to 50% of the annual income of the victim towards future prospect. However, following the observation of the Hon'ble Supreme Court made in *Pranay Sethi (supra)*, since the victim at the time of accident was 21 years of age and presumably self-employed, the claimant is entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

With regard to the rate of interest on the compensation amount, it is found that the learned Tribunal has granted interest @ 8% per annum. However, bearing in mind the prevailing banking rate of interest, the compensation amount shall carry interest @ 6% per annum from the date of filing of the claim application.

The other factors have not been challenged in this appeal.

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

<u>Calculation of Compensation</u>

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: 1/2 towards personal and living expenses	Rs.33,600/-
	Rs.33,600/-
Multiplier 18 (Rs.33,600/- x 18)	Rs.6,04,800/-
Add: General damages Loss of estate: Rs. 16,500/- Funeral expenses: Rs. 16,500/-	Rs.33,000/-
Total compensation	Rs.6,37,800/-

Thus, the claimant is entitled to compensation of Rs. 6,37,800/- together with interest @ 6% per annum from the date of filing of claim application (15.06.2015) till payment.

It is found that the appellant-insurance company in terms of the order of this Court has already deposited a sum of Rs. 22,50,493/- vide OD Challan No. 1945 dated 27.09.2023 and an amount of Rs. 25,000/- towards statutory deposit vide OD Challan No. 1130 dated 12.07.2023 with the registry of this Court. Both the aforesaid deposits along with accrued interest be adjusted against the entire compensation amount and the interest thereon.

Respondent-claimant is directed to deposit *ad valorem* court fees, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the compensation amount and the interest as indicated hereinabove in favour of the respondent no. 1 (claimant), upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

Upon full satisfaction of the compensation amount, if any amount is left, the same shall be refunded to the insurance company.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award of the learned Tribunal is 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**.)