28.08.2023
Ct.-654
Sl. No.-8
KB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

F.M.A. 1337 of 2021
With
IA No. CAN 1 of 2021
With
IA No. CAN 2 of 2022

The Oriental Insurance Co. Ltd.
-Vs-
Rani Das @ Ranibala Das & Anr.

Mr. Sanjay Paul
Ms. Jayita Ghosh
... For the appellant- insurance company.
Mr. Amit Ranjan Roy
... For the respondents-claimants.

This appeal is preferred against the judgment and award dated 31st July, 2021, passed by Learned Additional District Judge cum Judge Motor Accident Claims Tribunal 2nd Court, Tamluk in MAC Case No.153 of 2007 (Old No. 178 of 2006) granting compensation of Rs.5,83,600/- together with interest in favour of respondent no. 1- mother of the deceased under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th June, 2004 at about 8:30pm while the victim and his relative Rabindranath Shee were standing on the left side of NH 41 at Barsundra Bus Stoppage for attending the marriage ceremony at Bholsara Village, at that time the offending vehicle bearing Registration No. WB30A/4850 coming in a high speed dashed the victim Rabindranath

Shee and some other person. Both of them sustained injuries and were admitted to Haldia Sub-Divisional Hospital at Durgachak where both of them succumbed to their injuries and died. On account of sudden demise of the victim, claimants being the parents filed application for compensation of Rs.6,00,000/- together with interest under Section 163A of the Motor Vehicles Act, 1988. During pendency of the claim application the father of the deceased expired on 5th November, 2010, and his name was expunged from the claim application.

The claimants in order to establish their case examined two witnesses and produced documents which have been marked as **Exhibit 1** to **10** respectively.

The appellant-insurance company did not adduce any evidence.

The respondent no. 2-owner of the offending vehicle contested the claim application and filed written statement as well as the additional written statement before the Learned Tribunal. However, in the present appeal despite service of notice of appeal respondent no.2-owner of the offending vehicle is unrepresented.

Upon considering the materials on record and the evidence adduced on behalf of the claimants learned Tribunal granted compensation of Rs. 5,83,600/- together with interest in favour of the respondent no.1-

mother of the deceased under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved and dissatisfied of the impugned judgment and award of the Learned Tribunal the insurance company has filed the present appeal.

Mr. Sanjay Paul Learned Advocate for appellant insurance-company submits that precisely the insurance company in the present appeal has challenged the involvement of the alleged offending vehicle. He indicates that at the first instance FRT was filed by the investigating agency since no materials could be collected of involvement of the vehicle. Subsequent thereto, upon application by the complainant re-investigation was directed by the learned Court which also culminated into filing of FRT as mistake of fact. Again on being approached by the complainant, learned Court further directed for re-investigation and, thereafter, charge-sheet has been filed against the driver of the offending vehicle. The involvement of the vehicle has also been challenged by the owner of the offending vehicle, namely, Janata SKUS Ltd. In view of the consistent results arrived at by the investigating agency prior to filing of the charge-sheet indicating non-involvement of the vehicle by way of filing FRT on two occasions, it is manifest that the involvement of the alleged offending vehicle is doubtful. So far as the quantum of compensation is concerned, Mr. Paul learned Advocate for appellant insurance company submits that the Learned Tribunal erred in granting 40% of the annual income of the victim towards future prospect, Rs.1,30,000/- towards general damages and applying multiplier of 18 instead of 17 in an application under Section 163A of the Act in which compensation needs to be assessed on structured basis as per Second Schedule of the Act. In light of his aforesaid submissions, he prays for setting aside of the impugned judgment and award and/or modification of the same.

In reply to the contention raised on behalf of insurance company Mr. Amit Ranjan Roy, learned advocate for respondent no. 1-claimant submits that the learned ACJM, Haldia finding fault in investigation which resulted in filing of FRT initially, directed for further investigation by a police officer of the rank of D.S.P. and upon investigation charge-sheet has been submitted against the driver of the offending vehicle. Therefore, the involvement of the vehicle in the said accident has been duly proved and is not questionable.

So far as the quantum of compensation with regard to future prospect, general damages and multiplier is concerned he concedes to the submission advanced on behalf of the appellant-insurance company.

Having heard the Learned Advocates for respective parties, the following issues have fallen for consideration. *Firstly*, whether the offending vehicle was involved in the said accident; *secondly*, whether the learned Tribunal erred in granting an amount equivalent to 40% annual income of the victim towards future prospect; *thirdly*, whether the learned Tribunal erred in allowing general damages of Rs.1,30,000/- and *lastly*, whether the learned Tribunal erred in applying the multiplier 18 instead of 17.

With regard to the first issue relating to involvement of the vehicle, the appellant-insurance company has thrown challenge to the said aspect on the ground that on previous two occasions the investigating agency submitted FRT holding non-involvement of the vehicle. It is true that at the first instance the investigating agency submitted FRT vide Bhabanipur PS FRMF No.25 dated 22.10.2004. Thereafter, as per direction of the learned Court, re-investigation was held and again final report being no. 13 of 2005 dated 11.07.2005 was submitted as mistake of fact.

The final report was not accepted by the Learned Court and again re-investigation was directed to be conducted by an officer not below the rank of S.D.P.O. and ultimately the investigation was held by Deputy Superintendent of Police, Purba Madinipur who submitted charge-sheet against the driver of the offending vehicle. The order directing for reinvestigation by the Court has never been challenged before the higher Court. Thus, even if on previous two occasions the investigating agency submitted final reports but that does not raise any doubt with regard to the involvement of the offending vehicle since subsequent thereto charge-sheet has been submitted against the driver of the offending vehicle. Accordingly, argument advanced on behalf of the Insurance Company in this regard fall short of merit.

With regard to second issue relating to grant of future prospect it is found that the learned Tribunal has granted an amount equivalent to 40% of the annual income of the victim towards future prospect. Since this is an application under Section 163A of the Motor Vehicles Act, the amount granted towards future prospect is set aside following the Second Schedule to the Act.

With regard to the third issue relating the general damages, it is found that the learned Tribunal has granted an amount of Rs.1,30,000/- on such head. However, following the Second Schedule to the Act the claimant is entitled to general damages under loss of estate and funeral expenses of Rs.2,500/- and Rs.2,000/- respectively.

Coming to the last issue relating to multiplier, it is found that the learned Tribunal has adopted a multiplier of 18. However, following the Second Schedule to the Act, since the victim at the time of accident was 22 years of age, the multiplier should 17 instead of 18.

Other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.3,000/-
Yearly income (Rs.3,000/- x 12)	Rs.36,000/-
Less: 1/3rd towards personal and living expenses	Rs.12,000/-
	Rs.24,000/-
Multiplier 17 (Rs.24,000 x 17)	Rs.4,08,000/-
Add: General damages Loss of estate: Rs.2,500/- Funeral expenses: Rs.2,000/-	Rs.4,500/-
Total	Rs.4,12,500/-

Thus the claimant is entitled to compensation of Rs. 4,12,500/- together with interest @ 6% per annum from date of filing of claim application (i.e. 26.06.2006) till payment.

It is found that the Insurance Company has deposited a sum of Rs.10,75,300/- vide OD Challan no. 1662 dated 5th January, 2022 and has also deposited an amount of Rs.25,000/- vide OD Challan no. 1147 dated 3rd December, 2021 before the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

Learned Registrar General, High Court, Calcutta shall release the aforesaid compensation amount and interest indicated above in favour of the respondent no.1-claimant upon satisfaction of her identity and payment of balance court fees, if not already paid.

The respondent no.1-claimant is directed to deposit balance court fees on the amount of compensation assessed, if not already paid.

With the aforesaid observations, the present appeal stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Court below for information in accordance with the rules.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)