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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1112 of 2022

Anita Chatterjee (Bose) & Anr.
-Vs-
New India Assurance Company Ltd. & Anr.

Mr. Ashique Mandal
... for the appellants-claimants
Mrs. Sucharita Paul
... for the respondent no. 1-insurance company

This appeal is preferred against the judgment and award dated 3rd June, 2022 passed by the learned Additional District Judge –cum-Judge, Motor Accident Claims Tribunal, 5th Court, Barasat, 24 Parganas (North) in MAC Case No. 40 of 2016 granting compensation of Rs. 3,45,500/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 1st November, 2015 at about 22.00 hours the offending vehicle bearing registration No. WB-25C/6078 (30B-Bus) proceeding towards Jessore Road, in a rash and negligent manner, dashed the victim near 2½ No. Airport Gate under Airport P.S., as a result of which the victim sustained severe injuries on his person and immediately was taken to R. G. Kar Medical College & Hospital where he succumbed to his injuries and died on 7th November, 2015 at about 14.30 hours. On account of sudden demise of the victim, the claimants being the widow and the minor daughter filed application for compensation of Rs. 5,60,000/- together with interest 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 **4** respectively.

The respondent no. 1-insurance company also adduced the evidence of one witness and produced documents, which have been marked as **Exhibits A** to **E/1** respectively.

Since the respondent no. 2, owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 3,45,500/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988 and directed the owner of the offending vehicle to make payment of the compensation amount.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Ashique Mandal, learned advocate for the appellants-claimants submits that the learned Tribunal erred in directing the owner of the offending vehicle to make payment of the compensation amount on the ground that the cheque deposited for payment of premium towards the policy of insurance was dishonoured and there was no valid insurance policy existing on the relevant date of accident. However, it failed to consider that the intimation of cancellation of insurance policy was never served upon the owner of the offending vehicle, which has been admitted by the D.W-1 in his cross-examination. Thus, when the actual service of intimation of the cancellation of the insurance policy has not been made, the insurance company is to satisfy the award. In support of his contention, he relies on the decisions of this Court passed in ***FMA 2204 of 2015 (ICICI Lombard General Insurance Company Limited versus Sekh Mariyam Bibi & Others***) and in ***FMA 50 of 2019 with COT 21 of 2019 (Tata AIG General Insurance Company Limited versus Narayan Pal @ Narayan Paul & Anr***. He further submits that the victim at the time of accident was an electrician and had an income of Rs. 9,000/- per month. However, the learned Tribunal erred in determining the income at Rs. 3,000/- per month without any reasonable basis. To buttress his contention, he relies on the decisions of the High Court of Madras passed in ***N. Kathirvel and Another versus R. Sethuraman,*** reported in ***2021 SCC OnLine Mad 9488*** and in ***Gembu Ammal and Others versus R. Baskar and Another*** reported in ***2020 SCC OnLine Mad 19782*** and also another decision of the Hon'ble Supreme Court passed in ***Pushkar Mehra verus Brij Mohan Kushwaha And Others*** reported in ***(2015) 12 SCC 688***. He further submits that the claimants are entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect and general damages of Rs. 70,000/- under the conventional heads with 10% escalation on the said amount. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal as well as enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mrs. Sucharita Paul, learned advocate for the respondent no. 1-insurance company submits that the cancellation of insurance policy was duly intimated to the owner of the offending vehicle, which would be evident from the deposition of D.W-1 as well as the postal receipts produced by the insurance company marked **Exhibit D, D/1**. Thus, when the factum of cancellation of insurance policy has been intimated to the owner of the offending vehicle, the insurance company has got no liability. So far as the determination of income is concerned, she submits that not a single scrap of documentary evidence has been produced to sufficiently establish that at the relevant time of accident, the victim was an electrician. Save and except the oral evidence of P.W-1, there is no other evidence in respect of the profession of the victim. Therefore, the learned Tribunal has rightly assessed the income of the victim at Rs. 3,000/- per month. As regards entitlement of future prospect and general damages are concerned, she leaves the matter to the discretion of the Court.

Having heard the learned advocates for respective parties, following issues have fallen for consideration. *Firstly*, whether in the facts and circumstances of the case the insurance company is liable to satisfy the award. *Secondly*, whether the learned Tribunal erred in determining the income of the victim. *Thirdly*, whether the claimants are entitled to future prospect of 25% of the annual income of the victim. *Fourthly*, whether the claimants are entitled to general damages of

Rs.70,000/- under conventional heads together with escalation of 10% on such amount.

With regard to the first issue it is found that the learned tribunal exonerated the insurance company from satisfying the award on the ground that the intimation of cancellation of policy of insurance was given to the owner of the offending vehicle and thereby holding that there was no valid insurance policy subsisting on the date of accident. The insurance company in its written statement has contended that the policy of insurance was cancelled due to dishonour of the cheque bearing no.305175 drawn on UBI, Dum Dum Branch issued towards premium of policy of insurance. Due to dishonour of the said cheque further notice of cancellation of said policy was sent to the owner by way of registered post with acknowledgement due. In order to establish such fact the insurance company has examined one Pran Gopal Dey. Assistant Manager, New India Assurance Company Limited who proved the authorization letter, the cheque bearing no. 305175, letter of intimation dated 5th January, 2015, postal receipts and cheque returning memos which have been marked as **Exhibit-A, B, C, C/1, D, D/1, E** and **E/1** respectively. The postal receipt **(Exhibit D/1)** shows that the letter of intimation of cancellation of policy of insurance was sent to the owner of the offending vehicle. Considering the documents produced by the insurance company, the learned tribunal observed that the insurance company had cancelled the policy of insurance on 5th January, 2015 and had informed the owner as well as R.T.O. properly and no premium was paid thereby holding that the offending vehicle did not have any valid policy. On such basis it directed the owner of the offending vehicle to compensate and/or satisfy the amount of compensation.

In ***Daddappa and Ors. versus Branch Manager, National Insurance Company Limited*** reported in ***2008 A.C.J. 581***, the Hon'ble Supreme Court observed as follows:

> *"26. We are not oblivious of the distinction between the statutory liability of the insurance company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liability in other cases. But the same liability arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim."*

In ***United India Insurance Co. Ltd. versus Laxmamma and Ors.*** reported in ***AIR 2012 SC 2817***, the Hon'ble Supreme Court observed as follows:

> *"19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy*

> *covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."*

The Hon'ble Court in *Laxmamma (supra)* has also dealt with the proposition laid down in *Daddappa (supra)* and observed that the insurance company is to satisfy the award unless an intimation of such cancellation of policy of insurance has reached the insured before the accident. Now it is to be examined whether effective and actual service of intimation of the cancellation of policy of insurance has been made to the owner of the offending vehicle. DW1 Pran Gopal Dey, Assistant Manager of New India Assurance Company Limited has admitted in cross-examination that he cannot submit the acknowledgement due card in respect of the letter of intimation issued to the owner of the offending vehicle. He also stated in cross-examination that he has no document to show that the letters of intimation were at all received by the addressee. The materials on record thus goes to show that there is no document showing service and/or delivery of intimation of cancellation of insurance policy made to the owner of the offending vehicle. Such being the position, the principles laid down by Hon'ble Supreme Court in *Daddappa (supra)* and *Laxmamma (supra)* squarely applies in this case. The direction of the learned tribunal upon the owner to satisfy the award needs to be modified to the extent that the same shall be satisfied by the insurance company with liberty to recover the compensation amount from the owner of offending vehicle in accordance with law.

With regard to the second issue relating to determination of income, it is found that the claimants have claimed the income of the victim at Rs.9,000/- per month by working as electrician. Though PW1 stated the income and profession of the victim but no other supporting evidence has been produced by the claimants. The decision cited of Hon'ble Supreme Court in *Puskar Mehra (supra)* shows that the victim in the said case was having a business of trading in paints and hardware. Thus, the facts and circumstances of the cited decision is distinguishable from the case at hand.

The decisions passed by the High Court of Madras in *Gembu Ammal (supra)* and *N. Kathirval (supra)* do not lay down any proposition but an opinion of the Court which in that particular case appeared to it to be reasonable. The income of the victim of Rs. 9,000/- per month claimed by the claimants 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 observation of Hon'ble Court, resorting to certain guesswork and keeping in mind the economic factors and prices of essential commodities prevailing in the year 2015 and also the principles laid down in the catena of decisions of this Court, I am inclined to hold that the monthly income of the victim of Rs.5,000/- would be reasonable and appropriate.

With regard to future prospect, admittedly at the time of accident the victim was 45 years of age and self-employed, thus following decision of Hon'ble Supreme Court passed in ***National Insurance Company Limited***

versus Pranay Sethi and Others reported in ***(2017) 16 SCC 680***, the claimants are entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect.

So far as the general damages are concerned, the learned Tribunal has granted Rs.9,500/- on conventional heads. However, following the observation of Hon'ble Supreme Court 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 to the tune of 15,000/-, Rs.40,000/- and Rs.15,000/- together with escalation of 10% on such amount.

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.5,000/-
Yearly income (Rs.5,000/- x 12)	Rs.60,000/-
Add: 25% of the yearly income towards future prospects	Rs.15,000/-
	Rs.75,000/-
Less: 1/3rd towards personal and living expenses	Rs.25,000/-
	Rs.50,000/-
Multiplier 14 (Rs.50,000/- x 14)	Rs.7,00,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 10% escalation on general damages	Rs.7,000/-
Total	Rs.7,77,000/-

Thus, the claimants are entitled to Rs. 7,77,000/- together with interest @6% per annum from the date of filing of the claim application (21.12.2015) till payment.

Respondent no. 1-insurance company is directed to deposit the aforesaid compensation together with interest as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Respondent No.1-insurance company is granted liberty to recover the compensation amount to be satisfied from the owner of the offending vehicle in accordance with law.

Appellants-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

Upon deposit of the aforesaid amount of compensation together with interest, the Learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of respondents in equal proportions, after making payment of Rs. 44,000/- in favour of appellant no.1-widow of the deceased towards spousal consortium, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

Appellant no. 1, being the mother and natural guardian of minor appellant no. 2 shall receive the share of the minor on her behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office until attainment of majority of the said minor.

With the aforesaid observations, the present appeal stands 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.

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**.)