

03.02.2023
SL No.2
Court No. 654
Ali

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

**F.M.A.T. 973 of 2019
IA No: CAN/2/2022, CAM/3/2022**

**Rimi Basak (Biswas)
Vs.
New India Assurance Co. Ltd.**

Mr. Ashique Mandal
...for the appellant-claimant.

Mr. Rajesh Singh
...for the respondent No. 1-Insurance Co.
Mr Tapas Kumar Saha
..... for the substituted respondents.

This appeal is preferred against the judgement and award dated 27th June, 2018 passed by the learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 3rd court, Berhampore, Murshidabad in M.A.C Case no. 220 of 2010 (analogous with M.A.C Case no.195 of 2010) under Section 166 of the Motor Vehicles Act granting compensation of Rs. 29,23,036/-together with interest in favour of the claimants of both the claim cases.

On account of sudden demise of the victim, two separate claim cases were filed application under Section 166 of the Motor Vehicles Act, 1988. One application was filed by the parents of the deceased being M.A.C Case no.195 of 2010 and another by the widow of the deceased being M.A.C Case no.220 of 2010.

Both the aforesaid claim cases were heard analogously by the learned tribunal and disposed of by a single judgment.

During the pendency of this appeal the parents of the deceased namely respondent no. 3 & 4 (applicant of M.A.C. Case no.195 of 2010) expired and in their place three of their daughters namely Jyotsna Basak, Usha Basak and Mousumi Basak has been substituted in terms of order of this court dated 7th November 2022.

The brief fact of the case is that on 24 April 2010 at about 5:30 AM while the victim was going to Nashipur K.C.K. High Madrasa School driving a motorcycle bearing registration no. WB-58C/6488 through Berhampore-Jangipore State Highway and when he reached near Tiktikipara at that time the offending vehicle bearing registration no. WB-57/2175 (truck) in high-speed and in the rash and negligent manner dashed the motorcycle of the victim from behind as a result of which the victim sustained severe injuries all over his body and died at the spot. The claim cases as mentioned above arose in relation to the death of the victim in the said accident.

The claimants in MAC 195 of 2010 in order to establish their case examined four witnesses and produced documents which has been marked as

Exhibits 1 to 6 respectively. Appellant also deposed in defence in M.A.C. Case no. 195 of 2010.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties in the aforesaid claim cases, the learned tribunal granted compensation of Rs. 29,23,036/- together with interest in favour of the widow and parents of the deceased in equal proportions.

Being aggrieved by and dissatisfied with the impugned judgement and award the widow of the deceased (claimant in M.A.C 220 of 2010) preferred this appeal.

Mr Ashique Mandal, learned advocate for appellant, widow of the deceased, submits that in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **2017 ACJ 2700** the claimants is entitled to 50% of annual income of the deceased-victim towards future prospect, since at the time of accident the deceased was in permanent employment and was 37 years old. Further in view of the above decision of the Hon'ble Court the claimants are also entitled to general damages of Rs.70,000/- and increase of 10% on such amount. In his usual fairness he submits that in view of decision of Hon'ble Supreme Court passed in ***Sarla Verma and Others versus Delhi Transport Corporation and Another***

reported in **2009 ACJ 1298**, the multiplier should be 15 instead of 16 as adopted by the learned tribunal. In the aforesaid backdrop, he prays for enhancement of the compensation amount.

Mr Rajesh Singh, learned advocate for respondent no.1-insurance company submits that the multiplier should be 15 instead of 16. He further indicates that the share of the substituted respondents namely the daughters should be restricted to the share of the mother (since deceased).

Mr Tapas Kumar Saha, learned advocate appearing on behalf of substituted respondents namely the daughters admits that the share of the daughters be restricted to the share that would have fallen in favour of mother (since deceased).

Since the owner of the offending vehicle did not contest the claim application and the case was dismissed *exparte* against him, hence service of notice of appeal upon the said respondent is dispensed with.

Having heard the learned advocates for the respective parties, it is found that the appellant in the present appeal has raised the following issues, *firstly*, entitlement of claimants of 50% of annual income of the deceased towards future prospect and *secondly*, entitlement of claimants to general

damages of Rs.70,000/- with increase of 10% on the said amount.

It is found from the impugned judgment that the learned tribunal did not grant any amount towards future prospect. However, following the observation of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** since at the time of accident the deceased was 37 years of age and was in permanent employment as a teacher in High Madrasa School under Government of West Bengal, hence the claimants are entitled to an additional amount equalling to 50% of the annual income of the deceased towards future prospect.

With regard to general damages, in view of the above decision in ***Pranay Sethi's case (supra)*** the claimants are also entitled to general damages under the conventional heads of loss of estate of Rs.15,000/-, loss of consortium of Rs.40,000/- and funeral expenses of Rs.15,000/- and an increase of 10% on such amount as three years have elapsed.

It is contended by the advocates for respective parties that the multiplier adopted should be 15 instead of 16. Since at the time of accident the deceased was aged 37 years, following the observation of Hon'ble Supreme Court in ***Sarla Verma's case (supra)*** the multiplier should be 15 instead of 16 as adopted by the learned tribunal.

The other factors and findings of the learned tribunal has not been challenged in the appeal.

The calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income.....	Rs.22,762/-
Annual Income..(Rs.22,762/- X 12).	Rs. 2,73,144/-
Add: 50% of total Income	
towards future prospect.....	Rs.1,36,572/-
Annual loss of Income.....	Rs.4,09,716/-
Less: Deduction 1/3 rd of the	
Annual Income towards	
personal and living expenses.....	Rs.1,36,572/-
	Rs.2,73,144/-
Adopting multiplier 15	
(Rs.2,73,144/- X 15).....	Rs.40,97,160/-
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.....	Rs.7,000/-
Total Compensation.....	Rs.41,74,160/-

Thus the total compensation amount is calculated to Rs. 41,74,160/-. Admittedly the appellant (widow of the deceased) and the deceased-respondents (parents of the deceased) received an amount of Rs.29,23,036/-together with interest as granted by the learned tribunal. Accordingly, the appellant and the substituted respondents are entitled to receive the balance amount of compensation of Rs.12,51,124/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit. The aforesaid balance amount of compensation shall be

apportioned in the following manner 2/3rd in favour of appellant (widow of the deceased), and 1/9th each in favour of three substituted respondents.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.12,51,124/- 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.

Appellant is directed to deposit *ad valorem* court fees on the enhanced compensation amount, if not already paid.

Upon deposit of the enhanced amount of compensation, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in the proportion as indicated above, after making payment of Rs. 44,000/-to appellant (widow of the deceased) towards spousal consortium, in favour of appellant and substituted respondents upon 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 judgement and award of the learned tribunal is modified to the above extent. No order as to cost.

All connected applications if any stands disposed of.

Interim order if any stands vacated.

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.)