22.09.2023
Ct. no.654
Sl. No.242-243
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 962 of 2017

IFFCO Tokio General Insurance Co.Ltd.
Vs.
Saraswati Mondal & Ors.
With

COT 57 of 2023

Saraswati Mondal & Ors.
Vs.
IFFCO Tokio General Insurance Co. Limited

Mr. Rajesh Singh
... For the appellant-insurance Co.

Mr. Jayanta Kumar Mondal
... For the respondents-claimants

This matter is treated in the day's list under the heading "*Hearing*".

This appeal is preferred against the judgment and award dated 17th April, 2017 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 7th Court, Barasat, 24-Parganas (North) in M.A.C Case no. 11 of 2010 (Old No. 65 of 2010) granting compensation of Rs.2,65,400/- together with interest in favour of the legal heirs of the victim-injured under Section 166 of the Motor Vehicles Act, 1988.

By order dated 29th August, 2023, calling for lower court records and preparation of informal paper books were dispensed with.

The brief fact of the case is that on 27th October, 2009 at about 17-00 hours the offending vehicle bearing registration no. WB-25C/5343 dashed the victim near B.T.

College, Sahara Ghosh Para, under Airport Police Station, as a result of which, the victim sustained grievous injuries on his person. Due to the injuries, the victim sustained disablement of 80%. After the death of the victim-injured, the claimants being the widow, son and daughter filed application for compensation of Rs.2,90,000/- 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 **Exhibit 1** to **7** respectively.

Appellant-insurance company did not adduce any evidence.

By order dated 29th August, 2023, service of notice of appeal upon respondent no. 4-owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation to the claimants being the legal heirs of the injured-victim to the tune of Rs.2,65,400/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment of the learned tribunal, the appellant-insurance company has preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred a cross objection being COT 57 of 2023.

Both the appeal and the cross-objection are taken up together for consideration and disposal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that in the event of death of injured-claimant his legal heirs are entitled to only pecuniary loss of estate and their right to sue does not survive and accordingly the legal heirs of the injured-victim cannot maintain a claim application for compensation after the death of the injured-victim. He further submits that the interest on compensation @ 7% per annum needs to be scaled down bearing in mind the prevailing banking rate of interest. In the light of his aforesaid submissions, he prays for setting aside the impugned judgment and award and/or modification of the same.

Mr. Jayanta Kumar Mondal, learned advocate for the respondents-claimants submits that the claimants are entitled to future prospect of 10% of the annual income of the victim, which should be taken into account. He further submits that since at the time of accident, the victim was 57 years of age, hence, the multiplier should be 9 instead of 8, adopted by the learned Tribunal. In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the claim application is maintainable at the instance of legal heirs of the victim-injured on subsequent death of the victim. *Secondly,* whether the claimants are entitled to future prospect of an amount equivalent to 10% of the annual income of the victim. *Thirdly*, whether the multiplier should be 9 instead of 8 adopted by the learned Tribunal and *lastly,* whether the interest on the compensation amount granted by the learned Tribunal should scaled down from 7% per annum.

With regard to the first issue of maintainability of the claim application by the legal heirs of the victim-injured subsequent to death of the victim, such issue is no more *res integra*. The Hon'ble Supreme Court in the decision passed in ***The Oriental Insurance Company Limited versus Kahlon @ Jasmail Singh Kahlon*** *reported in* ***2021 SAR (Civ) 1078*** observed as hereunder:-

> *"18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal."*

Bearing in mind the aforesaid proposition, the legal heirs are entitled to maintain claim application on account of injuries sustained by the victim towards loss of estate. In view of the aforesaid, grounds advanced on behalf of the insurance company regarding maintainability does not hold good.

With regard to the future prospect, since at the time of accident the victim was 57 years of age and was self-employed, the claimants are entitled to an amount equivalent to 10% of the annual income towards future prospect.

So far as the multiplier is concerned, it is found that the learned Tribunal had adopted the multiplier of 8. However, bearing in mind the observations of ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 (6) SCC 12***, since the victim at the time of accident was 57 years of age, the multiplier should be 9 instead of 8, adopted by the learned Tribunal.

So far as the interest on the compensation amount is concerned, it is found that the learned Tribunal has granted interest @ 7% per annum on the compensation amount. 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.

It is found that the learned Tribunal has granted Rs.5,000/- towards pain and suffering. However, the Hon'ble Supreme Court in *Kahlon (supra)* disallowed the compensation under the heads of pain and suffering holding the same to be unsustainable. Accordingly, the amount granted under pain and suffering is liable to be set aside.

Other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs. 3,000/-
Annual income (Rs.3,000/- x 12)	Rs.36,000/-
Add: 10% of the annual income towards future prospect	Rs.3,600/-
	Rs.39,600/-
Loss of earnings: 80% of the total income	Rs.31,680/-
Multiplier 9 (Rs.31,680/- x 9)	Rs.2,85,120/-
Add: Medical expenses	Rs.30,000/-
Total :	Rs.3,15,120/-

The claimants are entitled to compensation of Rs.3,15,120/- together with interest @ 6% per annum from the date of filing of the claim application (27.01.2010) till payment.

It is found that the insurance company has already deposited an amount of Rs.4,23,644/- vide O.D. challan no.1146 dated 2nd August, 2018 and an amount of Rs.25,000/- as statutory deposit vide O.D. challan no. 3139 dated 12th February, 2018. Both the aforesaid deposits together with accrued interest be adjusted against the compensation amount and interest thereon.

The appellant-insurance company is directed to deposit the balance amount of compensation, if any, and interest as indicated above by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The respondents-claimants are directed to deposit the *ad valorem* court fees, if not already paid.

Upon deposit of the balance amount of compensation, if any, the learned Registrar General, High Court, Calcutta, shall release the amount of compensation in favour of the claimants in proportion of 40% of the respondent no.1 and 30% each to the respondent nos. 2 & 3 upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the appellant-insurance company.

With the aforesaid observation, the appeal and the cross objection stand disposed of. 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.)