15.05.2023
Ct. no.654
Sl. No.104
sn/ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 77 of 2023

United India Insurance Co.Ltd.
Vs.
Bishakha Sau & Ors.

Ms. Sucharita Paul
…for the Appellant

Mr. Rajdeep Bhattacharyya
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 29th June, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, 4th Court, Paschim Medinipur in MAC case no.287 of 2020 granting compensation of Rs.22,54,500/- 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 14.06.2022 at about 06-30 a.m. while the victim was travelling as a *Khalasi* (Helper) in the offending vehicle bearing registration no.WB-33C/8749 (Tipper Truck) which was driven in a rash and negligent manner, dashed backside of a standing vehicle, as a result of which the victim sustained serious injuries on his head, chest and over his bodies. Immediately, he was shifted to Midnapur Medical College and Hospital where he was treated till 20.06.2020. Thereafter, he was shifted to Minimal Access Surgical Private Limited at Tamluk and for better treatment, he was shifted to N.R.S. Medical College and Hospital, Kolkata where he succumbed to his injuries and died on 24.06.2020. On account of sudden demise of the victim the claimants being the widow, minor sons and minor daughter of the deceased filed an application for compensation of Rs.10,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses including the widow of the deceased and produced documents which have been marked as **Exhibits 1** to **10**, respectively.

The insurance Company did not adduce any evidence.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.22,54,500/-together with interest in favour of the claimants 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 claimants have preferred the present appeal.

Ms. Sucharita Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in determining the income of the deceased on the basis of oral evidence only and failed to consider that no cogent documentary evidence has been produced by the claimants in support of such oral evidence stating income of the deceased. She further submits that it is the specific case of the claimants that the deceased used to work as a Helper under one Apurba Mukherjee but the employer of the deceased has not been examined by the claimants to primarily establish the profession and income of the deceased. Therefore, the income of the deceased determined by the learned Tribunal is without any basis. Furthermore she submits that the learned Tribunal erred in granting spousal consortium and parental consortium of Rs. 50,000/- each in favour of the widow and minor children of the deceased apart from Rs.70,000/- towards general damages.

In view of her above submissions, she prays for modification of the judgment and award.

Mr. Rajdeep Bhattacharyya, learned advocate for the respondent nos. 1-4 (claimants), in reply, submits that the insurance company in cross-examination admitted the profession and income of the deceased as claimed by the claimants and, therefore, such income should be taken into consideration for determining the compensation. He further submits that in case of unorganized sector, it is not always possible to produce documents in support of income and therefore income needs to be assessed taking into consideration the profession of the deceased. To buttress his contention, his relies on the decision of the Hon'ble Supreme Court passed in ***Syed Sadiq and Others Versus Divisional Manager, United India Insurance Company Limited*** reported in ***(2014) 2 SCC 735.*** Further relying on a notification of the Government of West Bengal, Statistics, Investigation, Research & Publication (SIRP) Section being no.120/2RW/35/94/LCS/JLC dated 14/09/2020, he submits that the minimum rate of wages in the employment of Public Motor Transport in the State of West Bengal for cleaners and lorry coolies is Rs.8,554/- per month which can be guiding factor for determining the income of the deceased. He files a copy of the notification, which is taken on record. He concedes to the fact compensation towards general damages should be limited to Rs.70,000/-

By an order dated 11th January, 2023, the service of notice of appeal upon the respondent no.5, owner of the offending vehicle, has been dispensed with.

Having heard the learned advocates for the respective parties, it is found that two fold issues have been raised in this appeal. *Firstly*, whether the learned

Tribunal erred in determining of the income of the deceased and *secondly,* whether the learned Tribunal ought to have granted Rs.70,000/- towards general damages only.

With regard to the first issue relating to determination of the income of the deceased, it is found that the learned Tribunal determined the income of the deceased at Rs.10,500/- per month on the ground that the said income has been stated by the widow of the deceased (PW1) in cross-examination. As per the claim application and the evidence-in-chief of the PW1, widow of the deceased, it is stated that the deceased was a *Khalasi* (Helper) of the offending vehicle and his monthly income was Rs.10,500/- per month. Such fact relating to profession and income of the deceased is also stated by PW1 in her cross-examination. Be that as it may, such income as stated by the PW1, widow of the deceased, appears to be exorbitant.

It is relevant to note that neither the employer of the deceased nor any document has been produced in support of the income of the deceased.

Mr. Bhattacharyya, learned advocate for the respondents-claimants relying on *Syed Sadiq (Supra)* tried to impress upon the Court that where documentary evidences are not produced in case of unorganized sector, the oral evidence needs to be accepted.

It is found that the Hon'ble Supreme Court in the case of *Syed Sadiq (Supra)* considered the profession of the victim who was a vegetable vendor and keeping in mind the economy and rising price in agriculture product held the income of the victim to be Rs.6,500/- per month. The fact of the aforesaid case is distinguishable from the case at hand.

In ***Ramachandrappa versus Royal Sundaram Alliance Insurnace Co. Ltd.*** reported in ***(2011) 13 S.C.C. 236***, the Hon'ble Supreme Court held as hereunder:

> "*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 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.*"

It is not in dispute from oral evidence of PW1, that the deceased at the time of accident was a *Khalasi* (Helper) of the truck. The circular of the Government of West Bengal being no.120/2RW/35/94/LCS/JLC dated 14.09.2020 pressed into service by learned Advocate for respondents-claimants shows that the minimum rate of wages in the category of employment of cleaners and lorry coolies is Rs.8554/-.

Considering the aforesaid and bearing in mind the observation of Hon'ble Supreme Court as well as the state of economy prevailing at the time of accident, I am of the opinion that an amount of Rs.8,000/- per month be taken into account.

With regard to second issue, it is found that the learned Tribunal has allowed spousal consortium and parental consortium as well as granted general damages. Be that as it may, following the principle laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses, Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively.

The other factors have not been challenged in this appeal.

Bearing in mind the above, the calculation of compensation is assessed as follows:

<u>Calculation of Compensation</u>

Monthly income	Rs.8,000/-
Annual Income (Rs.8,000X12)	Rs.96,000/-
Add: Future prospect @ 40% of income of victim	Rs.38,400/-
Total income	Rs.1,34,400/-
Less : Personal expenses (1/4th)	Rs. 33,600/-
Loss of annual dependency	Rs. 1,00,800/-

Multiplier '15' (Rs.1,00,800/-X15)			Rs.15,12,000/-
Add : General damages			Rs.70,000/-
	(i) loss of estate	Rs.15,000	
	(ii) loss of consortium	Rs.40,000	
	(iii) funeral expenses	Rs.15,000	
Total amount			**Rs.15,82,000/-**

Thus, the total amount of compensation comes to Rs.15,82,000/- which shall carry interest @ 6% per annum from the date of filing of the claim application till payment.

It is found that the Insurance Company has already deposited Rs.25,68,972/- in terms of the order of this Court dated 11th January, 2023 vide OD Chalan No. 3767 dated 13.02.2023. Further, the Insurance Company has also deposited the statutory amount of Rs.25,000/- vide OD Chalan No.2365 dated 07.11.2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire awarded sum and the interest thereon.

Upon full satisfaction of the award, if any amount is left over that will be refunded to the Insurance Company.

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

The learned Registrar General of this Court shall release the said amount in favour of the respondents-claimants in equal proportion, after making payment of Rs.40,000/- in favour of respondent 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.

Respondent no.1, mother and natural guardian of minor respondent nos. 2 to 4, shall receive the share of the minors on their behalf and shall keep the share of the minors in a fixed deposit scheme of any nationalised bank or post office till attainment of majority by the said minors.

With the above observations, the instant 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, stand disposed of.

Interim order, if any, stands vacated.

Let copy of this order along with lower court records be forwarded to the learned Tribunal for information.

Urgent photostat copy of this order be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)