16.11.2023
Ct. no.654
Item no.1
Sn/KB

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

F.M.A.240 of 2023
CAN 2 of 2023

National Insurance Co.Ltd.
Vs.
Nurbanu Bibi & Ors.

Ms. Sucharita Paul
... for the appellant- insurance Co.

Mr. Amit Ranjan Roy
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 20th June, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, 2nd Court, Katwa, Purba Bardhaman in MAC case no.123 of 2016 granting compensation of Rs.10,78,000/- 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 9th July, 2016 at about 6-30 p.m. while the victim was going on a motor cycle as pillion rider through Katwa-Burdwan road and when he reached near Santa Village the offending vehicle bearing registration no. WB-43/1290 (Tata Sumo) dashed the motor cycle on which the victim was proceeding, as a result of which the victim sustained severe injuries and died after some time of the accident. On account of sudden demise of the victim, the claimants being the widow, minor daughters, minor sons and parents of the deceased filed application for compensation of Rs.8,00,000/- 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 **10/a** respectively.

The appellant-insurance Company did not adduce any evidence.

Since the owner of the offending vehicle (respondent no.8) has not contested the claim application, hence service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.10,78,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

Before delving with the merits of the appeal, it is pertinent to consider the application filed by respondents-claimants for recording attainment of majority of the respondent no.2, Meherunnesha Khatun and respondent no.3, Zinnat Nesa Khatun, being **CAN 2 of 2023**.

Mr. Amit Ranjan Roy, learned advocate for the respondents-claimants submits that the respondent no.2, Meherunnesha Khatun and the respondent no.3, Zinnat Nesa Khatun have attained majority and as such their attainment of majority be recorded in the Memorandum of Appeal.

Ms. Sucharita Paul, learned advocate for the appellant-insurance company does not raise any objection.

It is contended in the application that the date of birth of Meherunnesha Khatun (respondent no.2) is 1st April, 2001 and Zinnat Nesa Khatun (respondent no.3) is 6th December, 2002. As per the Aadhar Card of the respondent no.2, her date of birth is 1st April, 2001. The date of birth of the respondent no.3 has been wrongly stated in the application as 6th December, 2002 which, as per Aadhar Card, is 4th January, 2003. Be that as it may, it is found that both the respondent nos. 2 & 3 attained majority at the time of disposal of the claim application. Since such fact has not been placed before the learned

Tribunal, to avoid future complication, the application for attainment of majority of the respondent nos. 2 & 3 needs to be allowed.

Accordingly, the application for attainment of majority of respondent nos. 2 & 3 stands allowed.

Department concerned is directed to note the attainment of majority of respondent no.2, Meherunnesha Khatun and respondent no.3, Zinnat Nesa Khatun in the Memorandum of Appeal, as aforesaid.

The application being **CAN 2 of 2023** stands disposed of.

Ms. Sucharita Paul, learned advocate for appellant-insurance company at the very outset fairly submits that though in the present appeal ground has been taken that on the relevant date of accident the said offending vehicle did not have valid route permit and the investigator of the insurance company has collected the documents but the same has not been produced before the learned Tribunal at the time of evidence. She further submits that the learned Tribunal erred in determining the income of the victim at Rs.6,000/- per month in the absence of cogent evidence been adduced in support of the same. The income of the victim at best may be considered at Rs.5,000/- per month bearing in mind the catena of decisions of this Court. Moreover, since the number of dependants of the victim is 6 and there being no evidence of dependency of the father, the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/5th adopted by the learned tribunal. Further, she submits that there has been delay of 9 days in lodging the F.I.R., which raises doubt in the claimants' case. In light of her aforesaid submission, she prays for setting aside and/or modification of the impugned judgement and award passed by the learned tribunal.

Mr. Amit Ranjan Roy, learned advocate for respondents-claimants submits that as per the Minimum Wages Act applicable in the State of West Bengal the wage of unskilled labour is Rs.211/- per day. Further, the Hon'ble Supreme Court considered Rs.100/- per day as income of an unskilled labour in the year 2008. The avocation of the victim has remained unchallenged in evidence. Thus, the accident having taken place in the year 2016, the income of the victim determined by the learned tribunal at Rs.6,000/- per month is reasonable and should not be interfered with. He files copy of Notification No. 80-Law/MW/2W-32/13(Pt-II), dated 08.03.2019 of the Labour Department, Government of West Bengal published in the Kolkata Gazette and minimum wages rate chart as on 01.04.2016, which are taken on record. So far as the deduction towards personal and living expenses of the deceased is concerned, he submits that as there were more than 6 dependents including his father, hence the learned tribunal has rightly deducted $1/5^{th}$ of the annual income of the victim towards his personal and living expenses. Furthermore, he submits that the delay of 9 days in lodging F.I.R. has been duly explained thereof and as such it does not affect the claimants' case. In light of his aforesaid submission, he prays that the impugned judgement and award of the learned tribunal should be affirmed.

In reply to the submissions made on behalf of the respondents-claimants, Mrs. Sucharita Paul, learned advocate for appellant-insurance company submits that save and except oral evidence of P.W.1, widow of the deceased, there are no other evidence in proof of the profession of the victim working as a mason and, therefore, the wages scheduled under the Minimum Wages Act is not applicable in the facts and circumstances of this case.

Having heard the learned advocates for respective parties, following issues have fallen for consideration.

Firstly, whether the offending vehicle had valid route permit on the relevant date of accident. *Secondly*, whether the learned tribunal erred in determining the income of the victim at Rs.6,000/- per month. *Thirdly*, whether the learned tribunal erred in deducting 1/5th of annual income of the victim towards his personal and living expenses and *lastly,* whether the claimants case is affected by the delayed F.I.R.

With regard to the first issue relating to validity of route permit of the vehicle, it is found that during the course of investigation the route permit of the offending vehicle was seized by the investigating agency. However, the insurance company which in appeal challenges the validity of the route permit of the offending vehicle has not led any evidence disputing the same. Accordingly, the ground challenging the route permit of the offending vehicle is short of merit.

So far as the second issue with regard to the determination of income of the victim is concerned, it is found that the learned tribunal has determined the income of the victim at Rs.6,000/- per month. In the claim application as well as in her evidence the widow of the deceased namely Nurbanu Bibi (PW-1) has stated that the victim at the time of accident was a mason by profession and used to earn Rs.6,000/- per month. Save and except the evidence of P.W.1, widow of the deceased, there are no other evidence in support of the avocation of the victim. In view of the above, I find substance in submission of Mrs. Paul, learned advocate for appellant-insurance company that the wages scheduled under the Minimum Wage Act does not apply to the present case. Be that as it may, bearing in mind the prices of essential commodities and the economic factors prevailing in the year 2016 the income of Rs.5,000/- per month of the victim would be reasonable and appropriate in the facts and circumstances of the case.

With regard to the deduction towards personal and living expenses of the deceased, it is found that the learned tribunal has deducted $1/5^{th}$ towards personal and living expenses of the deceased. Though the number of claimants including the father of the victim is 7, however, there are no such evidence of dependency of the father upon the income of his deceased son. In the absence of such evidence, the father of the victim cannot be considered as dependant. Thus, the number of dependents of the deceased at the time of accident is 6. Following the observation of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121***, the deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/5^{th}$.

Coming to the last issue relating to delayed F.I.R., it is found that the accident has taken place on 9th July, 2016 and the F.I.R. has been lodged on 18th July, 2016. Thus there is delay of 9 days in lodging the F.I.R. Although there is delay yet there are no evidence of fabrication or concoction or engineering of the F.I.R. From the written complaint **(Exhibit-2)**, it is found that for performing the last rites of the deceased there has been delay in lodging of the F.I.R.

The Hon'ble Supreme Court observed in ***Ravi versus Badrinarayan and Others*** reported in ***2011 (1) T.A.C. 867 (S.C.)*** as follows:-

> *"20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kind to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Court*

finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground."

Bearing in mind the aforesaid proposition of the Hon'ble Supreme Court, since there are no evidence of fabrication or concoction or engineering of the F.I.R. the delay of 9 days in lodging the F.I.R. does not affect the claimants' case.

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/-
Annual income (Rs.5,000/- x 12)	Rs.60,000/-
Add: 25% of the annual income towards future prospect	Rs.15,000/-
	Rs.75,000/-
Less: 1/4th deduction towards personal and living expenses	Rs.18,750/-
	Rs.56,250/-
Multiplier 14 (Rs.56,250/- x 14)	Rs.7,87,500/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total compensation	Rs.8,57,500/-

Thus the claimants are entitled to compensation of Rs.8,57,500/- together with interest @ 6% per annum from the date of filing (i.e. 02.11.2016) of the claim application till payment.

It is found that the insurance company in terms of order of this Court has deposited a sum of Rs.14,65,346/- vide OD Challan no. 65 dated 10th April, 2023 and has also deposited statutory amount of Rs.25,000/- vide OD Challan no. 3153 dated 21st December, 2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

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

Learned Registrar General, High Court, Calcutta shall release the compensation amount and the interest indicated above in favour of the respondent nos. 1 to 7 (claimants) after making payment of Rs.40,000/- in favour of respondent no.1, widow of the deceased, towards spousal consortium, in equal proportion upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The respondent no.1, being the mother and natural guardian of minor respondent nos. 4 and 5 shall receive the share of the said minors on their behalf and keep the same in a fixed deposit account of any nationalized bank of post office until attainment of their majority.

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 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.)