29.08.2023
Ct. no.654
Sl. No.5 & 6
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 1342 of 2022
CAN 1 of 2023
CAN 2 of 2023

Shrimati Mala Chakraborty
Vs.
United India Insurance Co. Ltd. & anr.

With

FMA 223 of 2023

United India Insurance Co. Ltd.
Vs.
Mala Chakraborty and ors.

Mr. Rabindra Nath Mahata
Ms. Tandra Karim
…for the appellant-claimant
(F.M.A.1342 of 2022)
for the respondent no.1-claimant
(F.M.A.223 of 2023)

Ms. Sucharita Paul
..for the respondent-Insurance Co.
(F.M.A.1342 of 2022)
… for the appellant-Insurance Co.
(F.M.A.223 of 2023)

Both these appeals arise out of the judgment and award dated 13th June, 2022 passed by learned Judge, Motor Accident Claims Tribunal, XII Bench, City Civil Court at Calcutta in MAC Case No. 171 of 2018 granting compensation of Rs.20,05,000/- together with interest at the rate of 9% per annum from the date of filing of the claim application till realisation in favour of the claimant, the mother of the deceased, under Section 166 of the Motor Vehicles Act, 1988.

The brief facts of the case is that on 11th January, 2018 at about 15.10 hours in front of *"Sandhya Sweets"* at P-106, CIT Road, Kolkata-700014 the offending vehicle bearing registration No. WB-19H/9254 in a rash and negligent manner dashed the victim, as a result of which, the victim sustained severe injuries on his person and was removed to Calcutta Medical College and Hospital where the attending doctor declared him brought dead. On account of sudden demise of the victim, the claimant being the mother of the deceased filed application for compensation of Rs.25,65,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined three witnesses and produced documents, which have been marked as **Exhibit-1** to **16** respectively.

The Insurance Company also adduced the evidence of one witness and produced documents which have been marked as **Exhibit- A** and **B** respectively.

By order dated 31st January, 2022, service of notice of appeal upon the respondent nos. 2 and 3 has been dispensed with in FMA 223 of 2023 since the said respondents did not contest the claim application. For the similar reason, in FMA 1342 of 2022, service of notice of appeal upon the respondent nos.2 and 3-owners of the offending vehicle also 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.20,05,000/- together with interest at the rate of 9% per annum from the date of filing of the claim application till realisation under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the Insurance Company has preferred the appeal being *F.M.A.223 of 2023*.

The claimant has also challenged the impugned judgement and award of the learned Tribunal by preferring the appeal being *F.M.A.1342 of 2022*.

Both the aforesaid appeals are taken up together for consideration and disposal.

Ms. Sucharita Paul, learned advocate for the appellant-Insurance Company (in F.M.A. 223 of 2023) submits that the learned Tribunal erred in determining the income of the deceased at Rs.15,000/- per month and failed to appreciate that the income of the deceased has not been supported by any documentary evidence. P.W.3, father of the deceased, deposed that his deceased son used to work under him in his business and his monthly salary was Rs.15,000/-. However, P.W.3 failed to produce any register or documents of business showing payment of Rs.15,000/- per month from the profit of the business to his deceased son towards monthly salary. Therefore, the determination of income of the victim by the learned Tribunal at Rs.15,000/- per month is totally flawed. She further submits that the learned Tribunal erroneously granted Rs.2,50,000/- towards future prospect whereas it ought to have granted an amount equivalent to 40% of the annual income of the victim in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi & Others*** reported in ***(2017) 16 SCC 680.*** Further, the compensation under the general damages of Rs.2,25,000/- needs to be modified in terms of the decision of the Hon'ble Supreme Court in the case of *Pranay Sethi (supra)*. Lastly, she submits that the interest on the compensation amount at the rate of 9% per annum should be scaled down to 6% per annum in view of prevalent rate of banking interest. In light of her aforesaid submissions, she prays for modification of the impugned judgement and award.

In reply to the contentions raised on behalf of the Insurance Company, Mr. Rabindra Nath Mahata, learned Advocate for the respondent no.1-claimant (in F.M.A.223 of 2023) at the outset submits that the claimant has filed two separate applications, namely (i) For acceptance of additional evidence in respect of income tax returns acknowledgement for the Assessment Years 2016-2017, 2017-2018, 2018-2019 and 2019-2020, being *CAN 1 of 2023* and (ii) For filing four documents namely salary certificate, trade licence for the years 2016-2017, 2015-2016 and 2014-2015, before this Court, being *CAN 2 of 2023*. He submits that the aforesaid documents are required for just decision of the case. He further submits that the learned Tribunal considering the evidence of P.W.3, father of the deceased, has considered the income of the victim at Rs.15,000/- per month taking into account that the P.W.3 due to ailment was unable to carry on his business which was looked after by his deceased son. Such finding of the learned Tribunal with regard to determination of income at Rs.15,000/- per month of the victim does not call for interference. He fairly submits that multiplier in the present case should be 18 instead of 17, as adopted by the learned Tribunal. So far as the future prospect, general damages and interest on the compensation amount are concerned, he leaves the matter to the discretion of the Court.

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

Firstly, whether the learned Tribunal erred in determining the income of the victim at Rs.15,000/- per month; *secondly*, whether the learned Tribunal erred in granting Rs.2,50,000/- towards future prospect; *thirdly*, whether the learned Tribunal erred in granting Rs.2,25,000/- under the general damages; *fourthly*, whether the learned Tribunal erred in adopting the multiplier 17 instead of 18 and *lastly*, whether the learned Tribunal erred in allowing interest on the compensation amount at the rate of 9% per annum.

Before delving into the merits of the appeal, it would be appropriate to deal with the application being *CAN 1 of 2023* filed by the appellant-claimant (in F.M.A.1342 of 2022) for acceptance of additional evidence in respect of income tax returns for Assessment Years 2016-2017, 2017-2018 and 2019-2020 of Shyamal Chakraborty, father of the deceased.

The power to allow additional evidence at the appellate stage under Order XLI Rule 27 of the Code of Civil Procedure is a discretionary power. The general rule is that no evidence shall be produced during the pendency of the appeal but the Court has been given the discretionary power under some specified circumstances to allow additional evidence. The parties to an appeal shall not be entitled to produce additional evidence, whether oral and documentary, in the Appellate Court except on the grounds enumerated in clauses (a), (aa) and (b) of Order XLI Rule 27 of the Code of Civil Procedure. The Court may permit additional evidence to be produced only on satisfaction that the following three grounds namely, (i) if the Court from whose decree the appeal is preferred, has refused to admit evidence which ought to have been admitted, (ii) the party seeking to produce additional evidence, establishes that notwithstanding exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or (iii) when the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement, or for any other substantial cause.

Bearing in mind the aforesaid proposition of law, let me revert back the grounds taken by the appellant-claimant (in FMA 1342 of 2022) in her application for adducing additional evidence. Precisely, the only ground taken by the claimant is that she could not file the documents relating to income from business since she was not advised for the same. No ground has been made out that in spite of due diligence the documents were not within her knowledge or after due diligence the documents could not be produced before the learned Tribunal. Further, the income tax returns annexed to the application relate to the father of the deceased namely, Shyamal Chakraborty and not of the deceased. Due to the aforesaid reasons, the application for producing additional evidence falls short of merits.

Accordingly, the application being **CAN 1 of 2023** is dismissed.

The appellant-claimant in her appeal (in FMA 1342 of 2022) has taken out another application seeking leave to file four documents namely, salary certificate, trade licence for the years 2016-2017, 2015-2015 and 2014-2015. Upon going through the case record it is found that already those documents have been filed by the claimant on 4th April, 2022 and by order no.20 dated 4th April, 2022 those documents filed were considered as exhibits. Therefore, the prayer seeking leave to file the aforesaid documents also falls short of merits.

Accordingly, **CAN 2 of 2023** also stands dismissed.

With regard to first issue relating to determination of income of the victim, it is found that the learned Tribunal has determined the income of the victim at Rs.15,000/- per month. In order to establish the income of the victim, the claimant has examined one Shyamal Chakraborty, father of the deceased, as P.W.3 and produced salary certificate issued by the said witness. P.W.3 in his evidence-in-chief deposed that since due to his ailment he was unable to look after the day-to-day affairs of the business under the name and style of *"M/s. M.M. Enterprise, General Order Suppliers"* his son used to work under him as business assistant. He also produced the salary certificate issued by him showing income of Rs.15,000/- per month of the victim from such occupation. Be that as it may, in his evidence-in-chief, P.W.3 has admitted that he does not maintain any attendance register or salary register. In cross-examination, he stated that he could not submit cash book, ledger and other account books of his firm. He further stated that he used to pay the salary to his son in cash. It is imprudent that a person carrying on business of general order suppliers and making payment of Rs.15,000/- per month to his son from the account of the business would not maintain any register for salaries/payments. The absence of such document raises doubt as to the income claimed by the claimant at Rs.15,000/- per month of the victim. The income of the victim at Rs.15,000/- per month claimed by the claimant 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 proposition and resorting to certain guesswork, considering the evidence of the parents that the victim used to assist his father in the business of general order suppliers and keeping in mind the peculiar facts and circumstances involved in the case, I am of the opinion that an income of Rs. 6,000/- per month of the victim would be reasonable and appropriate.

With regard to second issue relating to future prospect, it is found that the learned Tribunal has granted Rs.2,50,000/- towards future prospect. However, since the victim at the time of accident was 23 years of age and presumably self-employed, following the observation of the Hon’ble Supreme Court in *Pranay Sethi’s case (supra)* the claimant is entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

With regard to general damages, it is found that the learned Tribunal has granted Rs.2,25,000/- on such head. However, following the observation of Hon’ble Supreme Court in *Pranay Sethi’s case (supra)*, the claimant is entitled to general damages under the conventional heads of loss of estate and funeral expenses of Rs.15,000/- each.

So far as the multiplier is concerned, it is found that the learned Tribunal has adopted a multiplier of 17. Following the observation of the Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation Ltd. & Another*** reported in ***(2009) 6 SCC 121*** since the victim at the time of accident was 23 years of age, hence a multiplier of 18 should be adopted instead of 17 as adopted by the learned Tribunal.

Coming to the last issue relating to interest on compensation, the learned Tribunal has granted interest at the rate of 9% per annum on the compensation amount from the date of filing of the claim application till realisation. Bearing in mind the prevalent banking rate of interest, the compensation amount should carry interest at the rate of 6% per annum from the date of filing of claim application till payment.

The other factors have not been challenged in both the appeals.

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

Calculation of Compensation

Monthly income	Rs. 6,000/-
Annual income (Rs. 6,000/- x 12)	Rs. 72,000/-
Add: 40% of the annual income towards future prospect	Rs. 28,800/-

	Rs. 1,00,800/-
Less: 1/2 towards personal and living expenses	Rs. 50,400/-
	Rs. 50,400/-
Multiplier 18 (Rs. 50,400/- x 18)	Rs. 9,07,200/-
Add: General damages Loss of estate: Rs.15,000/- Funeral expenses: Rs.15,000/-	Rs. 30,000/-
Total compensation	Rs. 9,37,200/-

Thus, the claimant is entitled to compensation of Rs.9,37,200/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 03.04.2018) till payment.

It is found that the Insurance Company has deposited a sum of Rs.28,57,036/- vide OD Challan No.3924 dated 27.02.2023 and an amount of Rs.25,000/- towards statutory deposit vide OD Challan No.1837 dated 13.09.2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

The claimant is directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the amount of compensation and interest indicated hereinabove in favour of the claimant upon satisfaction of her 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 Insurance Company.

With the above observations, both the appeals stand 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 a copy of this order along with lower court records be forwarded to the learned Tribunal at once in accordance with rules.

Urgent photostat certified copy of the order, if applied for, be given parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)