25.08.2023
Ct. 654
D/L 22 & 23
Kb/ab

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1082 of 2022
With
CAN 1 of 2022

National Insurance Co. Ltd.
-Vs-
Smtya Kalyani Jana & Ors.

With

COT 84 of 2022

Smtya Kalyani Jana & Anr.
-Vs-
National Insurance Co. Ltd

Mrs. Sucharita Paul
... for the appellant-Insurance Company

Mr. Jayanta Kumar Mandal,
Mr. Sayantan Rakshit
... for the respondent nos. 1 & 2-claimants

This appeal is preferred against the judgment and award dated 4th March, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Contai in MAC Case No. 03 of 2014 granting compensation of Rs. 11,06,600/- together with interest in favour of the respondent nos. 1 & 2-claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 11th November, 2013 at about 8 a.m. while the victim was standing beside Mandarmoni-Chaulkhola pitch road near Tarangamala Hotel at that time the offending vehicle bearing registration No. WB-31/2710 (Tractor) dashed the victim from behind, as a result of which the victim sustained grievous injuries all over his body and died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor son and the mother of the deceased filed application for compensation of Rs. 9,60,000/– together with interest under Section 166 of the Motor Vehicles Act, 1988.

During the pendency of the claim application, the mother of the deceased namely Menaka Jana (Claimant No. 3) expired and her name has been expunged from the claim application on 15th February, 2022.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **14** respectively.

The appellant-insurance company did not adduce any evidence.

By order dated 1st February, 2023, service of notice of appeal upon the respondent no. 3, 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 of Rs. 11,06,600/- 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 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 84 of 2022.

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

Mrs. Sucharita Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in determining the income of the victim at Rs. 6,500/- per month, in spite of fact that no such cogent documentary evidence has been produced to primarily establish the employment and the income from salary of the victim. She submits that since the accident has taken place in the year 2013, at best the income can be considered at Rs. 4,000/- per month. In the light of her aforesaid submissions, she prays for modification of the impugned judgment and award of the learned Tribunal.

In reply to the contention raised on behalf of the appellant-insurance company, Mr. Jayanta Kumar Mandal, learned advocate for respondent nos. 1 & 2-claimants submits that P.W.1, widow of the deceased has categorically deposed that her deceased husband used to earn Rs.7,000/- per month by working in "*M/s Rekha Sea Food Product Private Limited"* which is not contradicted by any contrary evidence and therefore the oral evidence can be taken into consideration for determining the income of the victim. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in the matter of ***Mohammed Siddique & Ors. versus National Insurance Co. Limited & Ors.*** reported in ***(2020) 3 SCC 57*** and another decision of this Court passed in ***National Insurance Co. Limited & Ors. versus Sujata Manna & Ors.*** reported in ***MANU/WB/0540/2017***. He further submits that the victim at the time of accident was about 35 years of age and was on fixed salary and as such the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect. He also submits that claimants are entitled an amount of Rs.70,000/- towards general damages under the conventional heads together with 10% escalation on such amount. In the 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 Tribunal erred in determining the income of the victim. *Secondly,* whether the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect. *Lastly*, whether the claimants are entitled to general damages of Rs.70,000/- under the conventional heads together with escalation of 10% on such general damages.

With regard to the first issue relating to determination of the income, it is found that the learned Tribunal has determined the income of the victim at Rs.6,500/- per month. The claimants in their claim application as well as through their witnesses have claimed that the deceased had a monthly income of Rs.7,000/- per month by working in "*M/s. Rekha Sea Food Product Private Limited*". In order to establish the income and employment of the victim the claimants adduced the evidence of one Sk. Mustaq Ali as PW-3, who proved the salary certificate marked as **Exhibit-14**. PW-3 deposed that the victim performed his duties at *"M/s. Rekha Sea Food Product Private Limited"* from 1st June, 2013 to 11th November, 2013 and his monthly salary was Rs.7,000/-. However, in cross examination the witness admitted that he did not bring the payment register regarding payment of salary of Rs.7,000/- per month to the victim. He also admitted that no register is maintained in the Company regarding appointment. Further, there is no pay-slip issued to the victim by *"M/s. Rekha Sea Food Product Private Limited"*. It is pertinent to note from cross-examination of P.W. 3 that on the date of examination he was not in employment with *"M/s. Rekha Sea Food Product Private Limited"*. No letter of authority was produced before the Court by this witness to depose in this case. The salary certificate has been issued on 23rd December, 2015 but the witness failed to produce any document on the material point of time, he worked as a manager in *"M/s. Rekha Sea Food Product Private Limited"*. Such being the position the evidence of P.W.-3 and the salary certificate issued by him is not acceptable.

In *Mohammed Siddique (supra),* it is found that the employer of the victim was examined who issued certificate marked as Exhibit. Considering the same, the Hon'ble Court held that the interference made by the High Court with the findings of the Tribunal with regard to the monthly income of the deceased was uncalled for. The fact of the cited decision is distinguishable.

With regard to *Sujata Manna (supra),* it is found that the victim used to run a hair cutting saloon as Barber and oral testimony of widow was consistent with regard to income of the victim of Rs. 6,000/- per month whereas in the case at hand the claimants have claimed that the victim was in service and tried to prove documents which have already been found to be unacceptable for the reasons enumerated as above. Thus, the proposition in the *Sujata Manna (supra)* does not apply to the facts of this case.

Be that as it may, bearing in mind the catena of decisions of this Court and also considering the economic factors and price of essential commodities prevailing at the relevant time in the year 2013, I am of the opinion that an amount of Rs.4,000/- per month as income of the victim will be reasonable and appropriate in the facts and circumstances of this case.

With regard to second issue relating to future prospect, it is found that the Learned Tribunal granted future prospect of 30% of annual income of the victim. However, following the proposition of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others,*** reported in ***2017 ACJ 2700***, since the victim at the time of accident was about 35 years of age and was presumably self-employed, an amount equivalent to 40% of the annual income of the victim should be taken into account towards future prospect.

As regards general damages, it is found that the learned Tribunal has granted Rs. 5,000/- towards funeral expenses and Rs. 20,000/- towards loss of consortium. Following decision in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, 40,000/- and Rs. 15,000/- respectively together with 10% escalation on the said amount since three years have already been elapsed.

Other factors have not been challenged in this appeal.

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

<u>Calculation of Compensation</u>

Monthly Income	Rs.4,000/-
Annual Income (Rs.4,000/-x 12)	Rs.48,000
Add: 40% of annual income towards future prospect	Rs.19,200/-
	Rs.67,200/-
Less: 1/3rd towards personal and living expenses	Rs.22,400/-
	Rs.44,800/-
Multiplier 16 (Rs.44,800/- x 16)	Rs.7,16,800/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 10% escalation on general damages	Rs.7,000/-
Total compensation	Rs.7,93,800/-

Thus the claimants are entitled to compensation of Rs.7,93,800/- together with 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 the amount of Rs. 16,53,769/- vide OD Challan no. 1629 dated 25th August, 2022 and a sum of Rs.25,000/- towards statutory deposit vide OD Challan no.1060 dated 30.06.2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

Learned Registrar General, High Court, Calcutta is directed to release the compensation amount and interest as indicated above in favour of the respondent nos. 1 and 2, in equal proportion after making payment of Rs.44,000/- to respondent no.1-widow of the deceased towards spousal consortium upon satisfaction of their identity.

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

Respondent no.1, being the mother and natural guardian of minor respondent no.2 shall receive the share of the minor on his behalf and keep the same in a fixed deposit of any nationalised bank or post office until attainment of majority of the said minor.

With the aforesaid observations, the present appeal and the cross objection 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, are also disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower Court records be transmitted to the learned Tribunal in accordance with Rules.

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**.)