

14.09.2023
Ct. 654
D/L 175
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 158 of 2023
With
CAN 1 of 2023

The Oriental Insurance Co. Ltd.
-Vs-
Tapasi Samanta & Ors.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
... for the appellant-Insurance Company

Mr. Subhankar Mandal
... for the respondent nos. 1 to 4-claimants

This appeal is preferred against the judgment and award dated 6th September, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court-II, Howrah in MAC Case No. 209 of 2015 granting compensation of Rs. 38,82,656/- 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 6th November, 2013 at about 05.00 hours while the victim was proceeding by a motorcycle bearing registration No. WB-14J/5182 and when he reached in front of Nowrangri Agrobased Industry at that time the offending vehicle bearing registration No. CG-04DB/2640 (Lorry) in a rash and negligent manner dashed the victim, as a result of which the victim sustained severe injuries and

died on the spot. On account of sudden demise of the victim, the claimants being the widow, parents and the minor son filed application for compensation of Rs. 25,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

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 21st August, 2023, service of notice of appeal upon the respondent no. 5, owner of the offending vehicle has been dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 38,82,656/- 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.

Mr. Sanjay Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in deducting 1/4th of the annual income of the deceased towards his personal and living

expenses holding that there were four dependants of the victim at the time of death including the father of the victim whereas it failed to consider that the father of the victim cannot be considered as dependant in the absence of evidence of dependency. In support of his contentions, he relies on the decision of the Hon'ble Supreme Court passed in ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298***. He further submits that the learned Tribunal granted Rs. 40,000/- towards filial consortium to the parents in addition to spousal consortium, which is erroneous in the eye of law. He further submits that the interest on the compensation amount needs to be scaled down bearing in mind the prevalent banking rate of interest. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal.

Mr. Subhankar Mandal, learned advocate for the respondent nos. 1 to 4-claimants leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in deducting 1/4th of the annual income of the victim towards his personal and living expenses instead of 1/3rd; *secondly*, whether the learned Tribunal erred in granting Rs. 40,000/- towards filial consortium in addition to spousal consortium and *lastly*, whether the

rate of interest on the compensation amount should scaled down from 9% per annum.

With regard to the first issue relating to deduction towards personal and living expenses of the deceased, it is found that the learned Tribunal has deducted 1/4th of the annual income of the victim towards his personal and living expenses on the ground that the victim at the time of accident had four dependants. The claimants herein are the widow, mother, father and the minor son of the deceased. It is trite law that the widow, mother and the minor son are the dependants of the victim, however, so far as the father is concerned, the dependency needs to be supported by certain evidence as has been rightly argued by Mr. Paul, learned advocate for appellant-insurance company relying on *Sarla Verma (supra)*. Now, let me examine whether there is any evidence of dependency of the father on the income of the victim. Upon going through the evidence of P.W.1, Tapasi Samanta, widow of the deceased, it is found that she did not state that the father of the victim was dependent on his income. The father, who is also the claimant, did not adduce any evidence in Court of his dependency. Such being the position, in the absence of cogent evidence, the father cannot be considered as a dependant of the victim. Since it is found that on the relevant date of accident, there were three dependants of the victim namely the widow, mother and minor son

of the victim, the deduction towards personal and living expenses of the victim should be 1/3rd of the annual income of the victim instead of 1/4th adopted by the learned Tribunal.

With regard to the second issue relating to grant of consortium, it is found that the learned Tribunal has granted Rs. 40,000/- to the parents of the deceased towards filial consortium in addition to spousal consortium. In order to appreciate the aforesaid issue, it would be relevant to reproduce the paragraph nos. 46 and 52 of the decision of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in **2017 (16) SCC 680** hereinbelow:

“46. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh

Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-

“17. ... In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse’s affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

x x x x x

52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh*, 2013 ACJ 1403 (SC). It has granted Rs. 25,000/-towards funeral expenses, Rs.1,00,000/-for loss of consortium and Rs.1,00,000/-towards loss of care and guidance to minor children. The head relating to loss of care to minor children does not exist. Though the *Rajesh* (supra) refers to *Santosh Devi*, 2012 ACJ 1428 (SC), it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that a rise in price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. The principle of re-visiting the said heads is an acceptable principle. But the re-visit should not be fact- centric or quantum- centric. We think that it would be condign that the amount we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10 per cent in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

Upon a conjoint reading of paragraph no.46 and paragraph no.52 of the decision in *Pranay Sethi’s case (supra)*, it is quite evident that the head under ‘loss of consortium’ is confined only to the spouse. In view of the above, the grant of filial consortium in favour of the parents by the learned Tribunal is liable to be set aside.

With regard to the rate of interest, it is found that the learned Tribunal has granted interest @ 9% per annum on the compensation amount. However, bearing in mind the prevalent banking rate of interest, the compensation amount shall carry interest @ 6% per annum from the date of filing of the claim application.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.17,466/-
Annual income (Rs.17,466/- x 12)	Rs.2,09,592/-
Add: 50% of the annual income towards future prospect	Rs.1,04,796/-
	Rs.3,14,388/-
Less: 1/3 rd towards personal and living expenses	Rs.1,04,796/-
	Rs.2,09,592/-
Multiplier 16 (Rs.2,09,592/- x 16)	Rs.33,53,472/-
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.34,23,472/-

Thus, the claimants are entitled to compensation of Rs. 34,23,472/- together with interest @ 6% per annum

from the date of filing of claim application (30.07.2015) till payment.

Appellant-Insurance Company is directed to deposit the aforesaid amount of compensation together with interest before the learned Registrar General, High Court, Calcutta by way of a cheque within a period of six weeks from date.

The respondent nos. 1 to 4-claimants are directed to deposit balance court fees on the compensation assessed, if not already paid.

Upon deposit of the aforesaid amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation in favour of the respondent nos. 1 to 4-claimants, after making payment of Rs. 40,000/- in favour of the respondent no. 1, widow of the deceased, towards spousal consortium, in proportions that the respondent no. 1 shall receive 40%, the respondent no. 2 shall receive 20%, the respondent no. 3 shall receive 10% and the respondent no. 4 shall receive 30% respectively of the compensation amount, upon satisfaction of their identity and payment of balance court fees, if not already paid.

The respondent no. 1, being the mother and natural guardian of respondent no. 4 shall receive the share of the minor on his behalf and shall keep the same in a fixed deposit scheme of any nationalized bank or post office till attainment of majority by the said minor.

Appellant-insurance company is granted liberty to withdraw the amount of statutory deposit of Rs. 25,000/- together with accrued interest.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower court records be sent down to the learned Tribunal in accordance with rules.

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

(**Bivas Pattanayak, J.**)