12.06.2023
(as)
Ct.No.654
87

FMA 19 of 2023
with
CAN 1 of 2023

Rama Ghosh & Ors.
-vs-
The New India Asurance Com. Ltd. & Anr.

Mr. Amit Ranjan Roy.
...for the Appellants.

Mr. Soumalya Ganguly.
...for the Respondent-Insurance Company.

This appeal is preferred against the judgment and award dated 26th July, 2022 passed by learned Judge, Motor Accident Claims Tribunal, Katwa, Purba Bardhaman in MAC Case No.130 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

With the consent of parties, calling for of lower court records and preparation of informal paper books is dispensed with.

The brief fact of the case is that on 17th August, 2018 at about 9.30 P.M. while the victim along with others were proceeding through Katwa-Maldanga road, at that time, the offending vehicle bearing Registration No.WB-41H/5867 in a rash and negligent manner dashed them from behind. As a result of which the victim and others fell down on the ground and sustained injuries. The victim was taken to Katwa Sub Divisional Hospital where he died. On account of sudden demise of the deceased, the claimants being the widow, two sons and mother of the victim filed 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 and produced documents which have been marked as **Exhibits 1** to **10** respectively.

Respondent No.1, Insurance Company did not adduce any evidence.

Since respondent no.2-owner of the offending vehicle did not contest the claim application, hence service of notice of appeal upon the said respondent is dispensed with.

Upon considering the materials on record and the evidence adduced by the claimants, the learned Tribunal granted compensation of Rs.8,08,000/- together with interest in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the appellants-claimants have preferred the present appeal.

Mr. Amit Ranjan Roy, learned Advocate appearing for the appellants-claimants submits that the learned Tribunal failed to take into account the future prospect of 40% of the annual income of the deceased and general damages of Rs.70,000/-. He, in his usual fairness, submits that the multiplier should be 15 instead of 16 adopted by the learned Tribunal. In the aforesaid backdrop, he submits for enhancement and modification of the award.

Mr. Soumalya Ganguly, learned Advocate appearing for the respondent no.1-Insurance Company submits that the monthly income of the deceased considered by the learned Tribunal to the tune of Rs.6,000/- per month needs to be scaled down to Rs.5,000/-. He further submits that multiplier in the present case should be 15 instead of 16.

Upon hearing the learned Advocates for respective parties, it is found that the appellants-claimants have raised following issues in the present appeal. *Firstly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect. *Secondly*, whether the claimants are entitled to general damages of Rs.70,000/- under the conventional heads. *Lastly*, whether the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

With regard to the first issue, it is found that the learned Tribunal did not consider the future prospect. Since at the time of accident, admittedly the deceased was 39 years old and was self-employed, hence following proposition of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi &***

Others reported in ***(2017) 16 SCC 680***, the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

With regard to the second issue relating to general damages, in view of decision of Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages of Rs.70,000/- under the conventional heads of loss of estate, loss of consortium and funeral expenses.

Since at the time of accident, the victim was 39 years of age, hence following the observation of Hon'ble Supreme Court in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in **2009 ACJ 1298**, the multiplier should be 15 instead of 16, as has been rightly indicated by the both learned Advocates for the respective parties.

Although, learned Advocate for the respondent No.1-Insurance Company has challenged the determination of income but the same has not been challenged by way of any cross appeal. Hence, the argument advanced is not acceptable in this regard. Other factors have not been challenged in the appeal.

Bearing in mind, the aforesaid compensation is calculated as hereunder:

Calculation of Compensation

Monthly Income	Rs.6,000/-
Annual Income (Rs. 6000/-x 12)	Rs.72,000/-
Less:1/3rd towards personal and living expenses	Rs.24,000/-
	Rs.48,000/-

Add: Future prospect @ 40% of annual income of the deceased	Rs.19,200/-
	Rs.67,200/-
Multiplier 15 (Rs.67,000/- x 15)	Rs.10,08,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total amount	Rs.10,78,000/-

Thus, the claimants are entitled to compensation of Rs.10,78,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application (04.10.2018) till deposit of the amount.

Admittedly, the claimants have already received the amount of compensation of Rs.8,08,000/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.2,70,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

Respondent No.1-Insurance Company is directed to deposit the balance amount and the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad-valorem* Court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants in equal proportions after making payment of Rs.40,000/- in favour of the appellant No.1, widow of the deceased towards spousal consortium and upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

With the aforesaid observations, the 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.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Bivas Pattanayak, J.)