29.08.2023
Ct. no.654
Item nos.3&4
Sn/KB

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

FMA 929 of 2022

The New India Assurance Co. Limited
Vs.
Najima Bibi & Ors.
with
COT 87 of 2022

Najima Bibi & Ors.
Vs.
New India Assurance Co. Limited & Anr.

Mr. Sanjay Paul
…for the appellants-insurance Co.
Mr. Ashique Mondal
.. for the respondents-claimants

This appeal is preferred against the judgment and award dated 12 April, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, Diamond Harbour, 24 Parganas (South) in MAC case no.22 of 2020 granting compensation of Rs.17,70,700/- together with interest @ 9% per annum from the date of filing of the claim application till realization under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 9th December, 2019 at about 1-00 p.m. while the victim was proceeding from Amtala to Sirakole More riding on a motor cycle and when he reached near Gangarampur More at that time the offending vehicle bearing registration no. WB-19H-7653 coming from opposite direction in a rash and negligent manner dashed the victim, as a result of which the victim sustained severe bleeding injuries on his person. Immediately, the victim was shifted to Amtala Hospital wherefrom he was referred to *Shankarnath Dialysis Centre and Nursing Home* and thereafter he was also taken to Medical College & Hospital, Kolkata, where he succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow, minor daughters and parents of the victim filed application for compensation of Rs.20,00,000/- 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 **29 (collectively)**.

The appellant-insurance Company did not adduce any evidence.

By order dated 3rd November, 2022, service of notice of appeal upon the respondent no.6, owner of the offending vehicle, has been dispensed with since it did not contest the claim application.

Upon considering the materials on record and evidence adduced on behalf of the respondents-claimants, the learned Tribunal granted compensation of Rs. 17,70,700/- together with interest @ 9% per annum from the date of filing of the claim application till realization 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.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred Cross Objection being COT 87 of 2022.

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

Mr. Sanjay 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 which has not been proved by any cogent documentary evidence and the only oral evidence of the income of the victim is of the widow of the deceased which is not supported by any other evidence. He further submits that the learned Tribunal erroneously granted filial consortium and parental consortium of Rs.40,000/- each. Furthermore, he submits that rate of interest @ 9% per annum needs to be scaled down as per the prevailing bank rate of interest. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Ashique Mondal, learned advocate for the respondent nos. 1 to 5 (claimants) submits that the evidence of PW-1, widow of the deceased, clearly shows that the victim at the relevant time of accident was a vegetable vendor having income of Rs. 8,000/- per month and such evidence has not been contradicted either in the cross examination or by adducing independent evidence. The solitary evidence of PW-1 can be accepted for determination of income of the deceased in the absence of any other supportive evidence. To buttress his contentions, he relies on the decision of this Court passed in ***Khairunnesa Bibi & Ors. versus The National Insurance Co.Ltd. & Anr.*** reported in ***2010 SCC On Line Cal 1348***. Referring to the decision of the Hon'ble Supreme Court in ***Syed Sadiq & Ors. versus Divisional Manager, United India Insurance Co. Ltd.*** reported in ***(2014) 2 SCC 735***, he submits that the Hon'ble Supreme Court considered the income of the victim at Rs. 6,500/- in respect of the accident which has taken place in the year 2008. Therefore, the accident having taken place in the year 2019, the income of Rs.8,000/- per month claimed by the claimants is reasonable and should be taken into account. He further submits that since three years have elapsed the claimants are entitled to 10% escalation on the general damages.

Having heard the learned advocates for the respective parties, following issues that have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim at Rs. 6,500/- per month. *Secondly ,* whether the learned Tribunal erred in granting filial consortium and parental consortium. *Thirdly,* whether the learned Tribunal erred in granting interest on compensation @ 9% per annum and *Lastly,* whether the claimants are entitled to 10% escalation on the general damages.

With regard to the first issue relating to determination of the income of the victim, 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 the evidence of PW-1, widow of the deceased, had claimed that the victim at the relevant time of accident was a vegetable vendor and had monthly income of Rs.8,000/- per month. It is true that save and except the evidence of PW-1, there is no evidence oral or documentary in support of business and income of the victim. Be that as it may, in the cross examination also, the PW-1 has stated that her husband was engaged in vegetable business and used to earn Rs.8,000/- per month.

In *Khairunnesa Bibi (supra)*, the widow of the victim in cross-examination deposed that everybody of the locality knew that the victim was a vegetable seller but she was not in a position to examine a single person in support to such claim. Considering the aforesaid aspect, this Court observed that, if a witness asserts that everybody of the locality knew that her husband was a vegetable seller, but for some reason, she was not in a position to examine any of them, that fact does not imply that the victim was not at all a vegetable seller and when no person has come forward to dispute the assertion of P.W.1. In the case at hand, P.W.1, widow of the victim has never deposed that the profession of her husband was known to the local persons and she was not in a position to examine a single person. The aforesaid aspect in the cited decision is distinguishable from the case at hand.

Be that as it may, the profession of the victim can be accepted to be a vegetable vendor on the basis of testimony of P.W.1 which stood firm in cross-examination. However, the income claimed by the claimants 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. . . ."*

In *Syed Sadiq (supra)*, the Hon'ble Supreme Court observed as follows:

> *"**9.** There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."*

Bearing in mind the aforesaid observation of the Hon'ble Court, resorting to certain guesswork and keeping in mind the economic factors and prices of essential commodities prevalent in the year 2019, I am of the opinion that the income of Rs.6,500/- per month of the victim determined by the learned Tribunal does not call for interference.

With regard to the second issue as to grant of filial consortium and parental consortium, it is found that an amount of Rs.80,000/- each has been granted on such head. The amount towards the conventional head namely loss of consortium has been settled by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680*** after considering all other earlier decisions passed by it and even noted that in different cases different amounts under conventional heads have been granted. The Constitution Bench took note of the following decisions at paragraph no.48 such as in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 (6) SCC 121***, 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 whereas in ***Santosh Devi versus National Insurance Company Ltd. and others*** reported in ***2012 ACJ 1428 (SC)*** the court granted Rs. 5,000/-for transportation of the body, Rs.10,000/-as funeral expenses and Rs.10,000/-as regards loss of consortium and again in ***Rajesh and Others versus Rajbir Singh and Others*** reported in ***2013 ACJ 1403 (SC)*** the court granted Rs. 1,00,000/-towards loss of consortium and Rs.25,000/-towards funeral expenses and Rs.1,00,000/-for loss of care and guidance to minor children. It has also quoted with approval the meaning of consortium from paragraph no.17 in *Rajesh (supra).* After accepting that the concept of consortium was confined to spouse or consort, the allowance for loss of care and guidance of minor children as provided in *Rajesh (supra)* was found to be unacceptable at paragraph no.54 in *Pranay Sethi (supra)* which is reproduced hereunder:

> *"54. 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, 012 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"*

On conjoint reading of paragraph 48 and 54 of the said decision, it is clear that the head under loss of consortium is confined only to spousal consortium. Thus, the grant of compensation under filial and parental consortium in addition to the spousal consortium is erroneous.

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

Coming to the last issue relating to escalation on the general damages, following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra)*, since three years have already been elapsed, the claimants are entitled to escalation of 10% on the general damages.

Other factors have not been challenged in this appeal.

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

Calculation of Compensation

Monthly income	Rs.6,500/-
Annual income (Rs.6,500/- x 12)	Rs.78,000/-
Add: 40% of the annual income towards future prospect	Rs.31,200/-
	Rs.1,09,200/-
Less: 1/4th towards personal and living expenses	Rs.27,300/-
	Rs.81,900/-
Multiplier 18 (Rs.81,900/- x 18)	Rs.14,74,200/-
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/-
Add: Treatment expenses	Rs.66,500/-
	Rs.16,17,700/-

The claimants are entitled to compensation of Rs.16,17,700/- together with interest @ 6% per annum from the date of filing of the claim application (i.e. 1st February, 2020) till payment.

It is found that the insurance company has deposited a sum of Rs.21,33,410/- vide OD Challan No. 1327 dated 26th July, 2022 and made statutory deposit of Rs.25,000/- vide OD Challan No. 1123 dated 6th July, 2022. Both the aforesaid deposits together with accrued interest be adjusted against the compensation amount and interest thereon.

Respondents-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

Learned Registrar General, High Court shall release the amount of compensation and the interest as indicated above in favour of the respondents-claimants in equal proportions after making payment of Rs.44,000/- in favour of appellant No. 1, widow of the deceased towards spousal consortium upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

Respondent no.1-mother and natural guardian of minor respondent nos. 2 and 3 shall receive the share of minors on their behalf and keep the same in a fixed deposit of any nationalised bank or post office upon attainment of 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 above observations the appeal and 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.

Let a copy of this order along with lower court records be forwarded to learned Tribunal forthwith in accordance with rules.

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.)