

31.01.2023
SL No.1
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A.T. 1197 of 2016

**Smt. Rina Mitra & Anr.
Vs.
The Shriram General Insurance Company Ltd. & Anr.**

Mr. Jayanta Banerjee
Mr. Sandip Bandyopadhyay
Ms. R. Basu Roy
...for the appellants-claimants.

Mr. Rajesh Singh
....for the respondent no. 1-Insurance Co.

This appeal is preferred against the judgment and award dated 23rd December, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Howrah in M.A.C Case no. 521 of 2010 granting compensation of Rs.16,70,500/- alongwith interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 3 October 2010 at about 12 hours while the victim was proceeding by a motorcycle bearing registration no. WB-12N/0638 through NH-6 towards Midnapore side keeping left side at that time the offending vehicle bearing registration no. WB-41D/2348 in the rash and negligent manner dashed the victim near Nowpala, as a result of which the victim sustained severe injuries all over his body and died. On account of sudden demise of the victim, the claimants being the parents filed application under

Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.25,00,000/- along with interest.

The claimants in order to prove their case examined three witnesses including mother of the deceased and produced documents which have been marked **Exhibits 1 to 16** respectively.

Respondent no.1-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence produced by the claimants the learned tribunal granted compensation of Rs.16,70,500/- along 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 the claimants have preferred the present appeal.

Mr Jayanta Banerjee, learned advocate for appellants-claimants submits that the learned tribunal erred in considering the post-mortem report for determining the age of the deceased-victim whereas it ought to have taken into account the age of the victim as per his voter's identity card. The multiplier should be based on the age of the victim as per the voter's identity card and not post-mortem report. In support of his contention he relies on the decision of this Court passed in **Sri Paritosh Saha**

& Ors. versus The Oriental Insurance Co. Ltd & Anr reported in **(2015) 1 WBLR (Cal) 477.**

He further submits that since the deceased was in permanent employment and was of 30 years of age at the time of accident, hence following the observation of Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and Others** reported in **2017 ACJ 2700** the claimants are entitled to an additional amount equalling to 50% of the annual income of the deceased-victim towards future prospect.

He further submits that in view of the aforesaid decision of the Hon'ble Court, the claimants are also entitled to general damages of Rs.30,000/-under the conventional heads of funeral expenses and loss of estate.

In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of appellants-claimants, Mr Rajesh Singh, learned advocate for respondent no.1-insurance company submits that the learned tribunal has rightly relied on the post-mortem report for determining the age of the deceased-victim since the voter's card does not disclose the date of birth and only the year of birth has been stated therein. Furthermore, it is the incumbent duty of the claimants to establish the age

of the victim and since the victim was employed as Assistant Librarian the claimants could have easily produced documents of service to verify such age of the victim claimed in the claim application, which they have failed.

He further submits that there is no iota of evidence that the deceased-victim was in permanent job and therefore the future prospect is to be assessed taking into account such factor.

By order dated 13th January, 2023 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with.

Having heard the learned advocates for the respective parties, it is found that the appellants-claimants have precisely raised three issues *firstly* that the determination of the age of the victim at the time of accident should be on the basis of voter's identity card instead of post-mortem report; *secondly* that the claimants are entitled to additional amount of 50% of the annual income of the deceased towards future prospect and *lastly* that the claimants are entitled to general damages.

With regard to the age of the deceased, two documents have been produced before the learned tribunal namely the voter's identity card of the deceased **(Exhibit 5)** and post-mortem report **(Exhibit 8)**. The learned tribunal has taken into

account the age of the victim to be 32 years as noted in the post-mortem report. The doctors prescribe the age in the post-mortem report on the basis of scientific analysis which can be appropriate but cannot be accurate. Therefore, the age prescribed in the post-mortem report can be accepted in the absence of Ration Card, Birth Certificate, Passport, Aadhar Card and voter's identity card. When the self-declared age is available in the voter's identity card issued by a concerned Government Department the same shall be taken into consideration for determining the age of the deceased and there is no justification to ignore the said contemporaneous document disclosing the age placed before the court. I find substance in the submission of Mr Banerjee in this regard relying on the decision of this court passed in ***Sri Paritosh Saha (supra)*** wherein disapproving the finding of the learned tribunal it observed that the learned tribunal fell in error in overlooking the fact that the voter's identity card was an official document possibly based on a victim's own declaration of age. As per the voter's identity card (**Exhibit 5**) the year of birth of the deceased is 1980. The accident having taken place on 3 October 2010 the age of the victim falls within 30 years and 31 years. Therefore, following the observation of Hon'ble Supreme Court made in ***Sarla Verma and Others versus Delhi Transport***

Corporation and Another reported in **2009 ACJ 1298** the multiplier to be adopted for determining the compensation amount should be 17.

The second aspect relates to entitlement of future prospect. The respondent no.1-insurance company has precisely thrown challenge to such entitlement to the extent of percentage to be taken into account since there is no evidence that the victim at the time of accident was in permanent employment. In order to appreciate such contention, it would be proficient to refer to the evidence of PW3 and the documents produced in support of employment. As per the evidence of PW3, Literate Peon, the deceased was employed as Assistant Librarian in Bankim Bhawan Gabeshana Kendra, Naihati. This witness produced Acquittance Roll for the month of July, August and September 2010 marked as **Exhibits 11, 12 and 13** respectively. It is found from the above Acquittance Rolls that the pay structure of the deceased included following heads namely present pay, special pay or allowance, dearness allowance, house rent allowance, medical allowance and his pay-band and grade pay is also reflected from the said Acquittance Roll. Thus, the structure of pay appearing in the Acquittance Roll shows that the deceased-victim was in permanent employment. Thus, since the deceased at the time of accident was aged between 30 years and 31 years

and was in permanent employment, following the observation of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** the claimants are entitled to an additional amount equalling to 50% of the annual income of the deceased towards future prospect.

Further in view of the above decision in ***Pranay Sethi's case (supra)*** the claimants being the parents are entitled to general damages under the conventional heads of funeral expenses and loss of estate of Rs.15,000/- and Rs.15,000/- respectively.

The other findings and factors arrived at by the learned tribunal has not been challenged in the appeal. Keeping in mind the aforesaid the calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income.....	Rs.16,330/-
Annual Income.....(Rs.16,330/- X 12).....	Rs.1,95,960/-
Add: Future Prospects @ 50% of total Income..	<u>Rs.97,980/-</u>
Annual loss of Income.....	Rs.2,93,940/-
Less: Deduction of 1/2 of the Annual Income (towards personal and living expenses).....	<u>Rs.1,46,970/-</u>
	Rs.1,46,970/-
Adopting multiplier 17 (Rs.1,46,970/- X 17)...	Rs.24,98,490/-
Add: General Damages.....	<u>Rs.30,000/-</u>
Total Compensation.....	Rs.25,28,490/-

Thus the total compensation amount comes to Rs.25,28,490/-. Admittedly the claimants have received the amount of Rs.16,70,500/-. It is informed that the claimants have not received any

interest on the amount of compensation granted by the learned tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.8,57,990/-together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 26.11.2010) till deposit. The claimants are also entitled to interest at the rate of 6% per annum on the compensation granted by the learned tribunal from the date of filing of the claim application (i.e 26.11.2010) till deposit was made before the learned tribunal, if not already received.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.8,57,990/- along with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 26.11.2010) till deposit and the interest on the amount of compensation granted by the learned tribunal as indicated in the foregoing paragraph, if not already paid, 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, if not already paid.

Upon deposit of the balance amount of compensation along with interest as indicated above and the interest on the compensation amount

granted by learned tribunal, if not paid, the learned Registrar General, High Court, Calcutta shall release the same in favour of the claimants in equal proportions and upon satisfaction of their identity and deposit of *ad valorem* court fees, if not already paid.

With the aforesaid observation the appeal stands disposed of. The impugned judgment and award of the learned tribunal is modified to the above extent. No order is to cost.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of the order if applied for the given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)