05.09.2023
Ct. no.654
Sl. Nos.266
sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 1352 of 2022

Shirapa Khilari & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
..for the appellants-claimants

Mr. Prabir Kumar Ghosh
..for the respondents-insurance Co.

Inadvertent typographical error has crept into the order dated 7th November, 2022 mentioning the name of learned advocate for the respondent no.1-insurance company as "*Mr. Parimal Kumar Pahari*" instead of " *Mr. Prabir Kumar Ghosh*" in the cause title and in the 13th line of the said order.

Let the name of " *Mr. Prabir Kumar Ghosh*" be read in place of "*Mr. Parimal Kumar Pahari*" in the aforesaid order.

The aforesaid order stands modified to the above extent. The other portion of the aforesaid order shall remain unaltered.

This appeal is preferred against the judgement and award dated 22nd December, 2017 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 6th Court, Paschim

Medinipur in M.A.C. Case No. 292 of 2015 granting compensation of Rs.5,90,500/- 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 07.05.2015 at about 8-00 p.m. while the victim was standing with her friend on the morum portion road near Karkatasole under Police Station Gopiballavpur, District Paschim Medinipur, at that time the offending vehicle bearing registration no.OR-11G/5011(Bolero Pick-up Van) in a rash and negligent manner dashed the victim from behind, as a result of which the victim sustained severe injuries on his person and he died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor son, minor daughter and mother of the deceased filed application for compensation of Rs.8,00,000/- together with interest 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 **Exhibit 1** to **6** respectively.

The respondent no.1-insurance company did not adduce any evidence.

By order dated 7th November, 2022, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, has been dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 5,90,500/- together with interest 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 appellants-claimants preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim and failed to consider that at the relevant time of accident the victim was a Mason by profession and had income of Rs.9,000/- per month, which is supported by the evidence of PW-1, widow of the deceased. He further submits that the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect and general damages of Rs.70,000/- under the conventional heads in view of the decision of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi***

and Others reported in ***(2017) 16 SCC 680***. He further submits that deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/3^{rd}$ since at the time of accident the victim had four dependants. In view of the aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Prabir Kumar Ghosh, learned advocate for the respondent no.1-insurance company submits that the income of the victim has not been proved by any cogent documentary evidence. He further submits that the manner of accident has also not been proved in this case. In view of this above submissions, he prays for dismissal of the appeal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly,* whether the learned 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 victim towards future prospect. *Thirdly,* whether the claimants are entitled to general damages of Rs.70,000/- under the conventional heads and *Lastly,* whether the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd.

With regard to the first issue relating to determination of income of the deceased, it is found that the claimants in their claim application as well as through the evidence of PW-I(Shirapa Khilari), widow of the deceased, has claimed that the deceased at the time of accident was a Mason and used to earn Rs.9,000/- per month by working under the Block Development Officer at Suliapada Block, District Mayur Bhanj, State Orissa. Save and except the oral evidence of PW-1, there are no cogent documentary evidence produced on behalf of the claimants to establish the profession and income of the victim. From the impugned judgment, it appears that one certificate issued by the Engineer of Suliapada Block was filed by the claimants in support of the income of the deceased but the same has not been proved. Be that as it may, bearing in mind the economic factors and prices of essential commodities prevailing in the year 2015 and also keeping in mind catena of decisions of this Court the income of the victim of Rs. 5,000/- per month would be reasonable and appropriate in the facts of circumstances of the case.

With regard to the second issue relating to entitlement of future prospect, it is found that the victim at the time of accident was 31 years of age and was self-employed and, therefore, following the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)* the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

So far as the general damages are concerned, it is found that the learned Tribunal has granted Rs.4,500/- towards funeral expenses and loss of estate and Rs. 10,000/- towards loss of love and affection. However, following the observations 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/-, Rs.40,000/- and Rs.15,000/- respectively.

With regard to the deduction towards personal and living expenses of the deceased, it is found that the learned Tribunal has deducted 1/3rd of the annual income of the victim towards his personal and living expenses. Since at the time of accident the number of dependants of the deceased is four, hence following the observations in ***Sarla Verma and Others versus Delhi Transport Corporation and***

Another reported in ***2009 (6) SCC 121***, the deduction towards personal and living expenses should be 1/4th of his annual income.

Although Mr. Ghosh, learned advocate for the respondent no.1-insurance company has challenged the manner of accident but the same has not been challenged by way of cross-objection.

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.5,000/-
Annual income (Rs.5,000/- x 12)	Rs.60,000/-
Add: 40% of the annual income towards future prospect	Rs.24,000/-
	Rs.84,000/-
Deduction: 1/4th towards personal and living expenses	Rs.21,000/-
	Rs.63,000/-
Multiplier 16 (Rs.63,000/- x 16)	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	Rs.10,78,000/-

Thus, the appellants -claimants are entitled to compensation of Rs.10,78,000/- together with interest @ 6% per annum from the date of filing of the claim application(22.05.2015) till payment.

It is informed that the claimants have already received a sum of Rs.5,90,500/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.4,87,500/- together with interest @ 6% per annum from the date of filing of the claim application (22.05.2015) till payment.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation and interest as indicated above, by way of a 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 balance amount of compensation and interest, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in equal proportion in favour of the appellants after making payment of Rs.40,000/- in favour of the 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.

The appellant no.1, being the mother and natural guardian of the appellant nos. 2&3 shall receive the share of the said minors and shall keep the same in a fixed deposit scheme of any nationalized bank or post office till attainment of majority of the said minors.

With the above 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, 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.)