

20.01.2023
Item No.12
Ct. No.654
CHC
(disposed of)

F.M.A.132 of 2021
IA NO: CAN/1/2020 (Old No: CAN/492/2020)

Smt. Gayatri Dolai & ors.
Vs.
The United India Insurance Company Ltd. & anr.

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

Mr. Sanjay Paul
...for the respondent no.1/Insurance
Company

This appeal is preferred against the judgement and award dated 4th November, 2019, passed by learned Additional District Judge –cum- Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Asansol, Paschim Bardhaman, in M.A.C Case No.60 of 2017/142 of 2016, granting compensation of Rs.26,50,532/- in favour of the claimants along with interest under Section 166 of the Motor Vehicles Act, 1988.

With the consent of the parties preparation of informal paper books is dispensed with.

The brief fact of the case is that on 2nd January, 2016, at about 7:30 a.m. while victim was returning to his residence at Bansra Colliery Quarter from his relative's house at Mongalpur and he was waiting for a

bus on NH 2 near Mongalpur Jute Mill Kali Mandir under P.S. Raniganj at that time the offending vehicle bearing registration no. W.B 38F/5454 in a rash and negligent manner dashed the victim, as a result of which the victim sustained fatal injuries and died on the spot. On account of sudden demise of the deceased victim, the claimants being widow, mother and minor son of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.40,00,000/- (Rupees Forty Lakhs).

The claimants in order to establish their case has examined three witnesses and produced number of documents which have been marked **Exhibit 1 to 15** respectively.

The respondent no.1/Insurance Company also adduced the evidence of medical officer of Medico Legal District Hospital, Asansol and proved the inquest report marked **Exhibit A** (with objection).

Upon considering the materials on record, and the evidence both oral and documentary placed by the respective parties before the learned Tribunal, the learned Tribunal granted compensation of Rs.26,50,532/- along with interest in favour of the claimants.

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

Mr. Amit Ranjan Roy, learned advocate appearing on behalf of the appellants/claimants submits that the learned Tribunal erred in not granting future prospect in favour of the claimants, and accordingly, the order of the learned Tribunal requires to be modified.

He further submits that in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***2017 ACJ 2700***, the claimants are entitled to an amount equaling to 50% of the annual income of the deceased towards future prospect.

Mr. Sanjay Paul, learned advocate for respondent no.1/Insurance Company leaves the matter to the discretion of the court.

Since respondent no.2 did not contest the claim application before the learned Tribunal and the case was disposed of *ex parte* against him, hence service of notice of appeal upon the said respondent is dispensed with.

Having heard the learned advocates of respective parties, it is found that the present appeal hinges on the sole ground of entitlement of future prospect of the claimants.

It is found from the impugned judgement that the learned Tribunal refused to grant future prospect to the claimants on the ground that the deceased victim studied up to class-VIII and was working in ECL as undermine labourer and hence there is no future prospect in such post in which the victim was engaged.

Be that as it may, following the observation of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** since the deceased at the time of death was in permanent job and was aged 29 years hence, an amount equaling to 50% of the annual income of the deceased should be taken into account towards future prospect.

The other findings of the learned Tribunal have not been challenged in the present appeal.

Bearing in mind the above factor, the calculation of compensation is made hereunder:-

Annual Income	Rs.2,27,694/-
Add. 50% future prospect	<u>Rs.1, 13,847/-</u>
	Rs.3,41,541/-
Less 1/3 rd towards Personal expenses	(-) <u>Rs.1,13,847/-</u>
Total loss of annual dependency	Rs.2,27,694/-
Multiplier 17 (age 29)	<u>X 17</u>
	Rs.38,70,798/-
General damages	<u>Rs.70,000/-</u>
Total Compensation	Rs.39,40,798/-

Thus, the claimants are entitled to compensation of Rs.39,40,798/-.It is informed that the claimants

have already received an amount of Rs.26,50,532/- along with interest as granted by the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.12,90,266/- along with interest @ 6% per annum from the date of filing of the claim application (i.e. on 29.08.2017) till deposit.

Respondent no.1/Insurance Company is directed to deposit the balance amount of compensation of Rs.12,90,266/- together with interest @ 6% per annum from the date of filing of the claim application (i.e. on 29.08.2017) till deposit by way of cheque with the learned Registrar General, High Court, Calcutta, within a period of six (06) weeks from date.

The appellants/claimants are directed to deposit *ad valorem* court fees on the enhanced amount of compensation, if not already paid.

Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta, shall release the amount in favour of the appellants/claimants in equal proportion on satisfaction of their identity and payment of *ad valorem* court fees if not already paid.

Appellant no.1, being the mother and natural guardian of minor appellant no.3, shall receive the share of the minor and shall keep the share of the minor in a fixed deposit scheme of any nationalized Bank or Post Office till the minor attains majority.

With the aforesaid observation, the appeal stands allowed against respondent no.1-insurance company and ex parte against respondent no.2-owner of the offending vehicle. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All connected application, if any, stands disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower court records be sent to the learned Tribunal for information.

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

(Bivas Pattanayak, J.)