15.06.2023
(as)
Ct.No.654
01

FMA 10 of 2023

Smt. Tuni Biswas & Ors.
-vs-
National Insurance Com. Ltd. & Anr.

Mr. Jayanta Banerjee,
Ms. Ruxmini Basu Roy.
...for the Appellants.

Mr. Afroj Alam.
...for the Respondent-
Insurance Company.

This appeal is preferred against the judgment and award dated 12th August, 2022 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 4th Court, Krishnagar, Nadia in MAC Case No.321 of 2014 granting compensation of Rs.6,37,000/- together with interest in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 6th June, 2012 at about 19.00 hours while the victim was going to Joynagar on his bicycle through Chitrasali Badkulla Road at village Aramdanga, at that time, the offending vehicle bearing Registration No. WB 51-8065 (Tata Ace pick up) in a rash and negligent manner dashed the bicycle of the victim, as a result of which the victim sustained serious and was immediately shifted to Nadia District Hospital at

Krishnagar where he succumbed to his injuries and died after some time of admission. On account of sudden demise of the deceased, the claimants being the widow, minor daughters and mother of the victim filed application for compensation of Rs.7,00,000/- 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 **8** respectively.

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

By order dated 12th June, 2023, service of notice of appeal upon the respondent No.2, owner of the offending vehicle, has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.6,37,000/- 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. Jayanta Banerjee, learned Advocate appearing for the appellants-claimants submits that the learned Tribunal erred in determining the income of the deceased to the tune of Rs.3,000/- per month which ought to have been Rs.4,000/- per month since at the time of accident the victim was a carpenter by profession. He further submits the learned Tribunal failed to grant interest on the compensation amount from the date of filing of the claim application and instead granted interest from the date of order which requires to be modified. He fairly submits that the rate of interest should be 6% per annum as per prevailing banking rate of interest. In the light of his aforesaid submission, he prays for modification and enhancement of the compensation amount.

Mr. Afroz Alam, learned Advocate appearing for the respondent no.1-Insurance Company also indicates for imposing interest on the compensation amount at the rate of 6% per annum as per prevailing banking rate of interest instead of 7.5% per annum imposed by the learned Tribunal.

Having heard the learned Advocates for the respective parties, the following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the deceased at Rs.3,000/- per month and *secondly*, whether the interest on the compensation amount should be from the date of filing of the claim application.

With regard to the first issue, it is found that the learned Tribunal determined the income of the deceased at Rs.3,000/- per month. Be that as it may, since the accident has taken place in the year 2012, bearing in mind the economic factors, cost of living and the rate of inflation prevailing during such period and also keeping in mind the catena of decisions of this Hon'ble Court, I am of the view that monthly income of Rs.4,000/- of the deceased should be taken into account for assessment of compensation.

So far as the interest on the compensation is concerned, it is found that the same has been granted from date of order. However, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

Both the learned Advocates for the appellants-claimants as well as the respondent No.1-Insurance Company have conceded that the rate of interest should be 6% per annum on the compensation amount bearing in mind the prevailing banking rate of interest.

Other factors have not been challenged in the appeal.

Bearing in mind the aforesaid, the calculation is made hereunder:

<u>Calculation of Compensation</u>

Monthly Income	Rs.4,000/-
Annual Income (Rs.4,000/- x 12)	Rs.48,000/-
Add: 40% of annual income towards future prospect	Rs.19,200/-
Total income	Rs.67,200/-

Less: 1/4th towards personal and living expenses	Rs.16,800/-
	Rs.50,400/-
Multiplier 15 (Rs.15,400/- x 15)	Rs.7,56,000/-
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.8,26,000/-

Thus, the appellants-claimants are entitled to compensation of Rs.8,26,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till payment.

It is informed that the claimants have already received the compensation amount together with interest in terms of order of the learned Tribunal.

Accordingly, the claimants are entitled to interest at the rate of 6% per annum on the compensation of Rs.6,37,000/- awarded by the learned Tribunal from the date of filing of the claim application till deposit was made before the learned Tribunal. The appellants-claimants are also entitled to balance amount of compensation of Rs.1,89,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

It is made clear that the amount received by the appellant-claimants towards interest @ 7.5% per annum on the compensation amount from date of order till deposit in terms of the order of learned Tribunal shall be adjusted against the balance amount.

Respondent No.1-Insurance Company is directed to deposit the balance amount upon adjustment as aforesaid, 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 as indicated above, learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants in equal proportions upon 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 on her behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minor.

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.)