15.06.2023
(as)
Ct.No.654
04

FMA 74 of 2023
with
CAN 1 of 2023

Vishmadev Mondal & Ors.
-vs-
Cholamandalam MS General Insurance Com. Ltd. & Anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Ruxmini Basu Roy.
...for the Appellants.

Mr. Rajesh Singh.
...for the Respondent-Insurance Company.

Affidavit of service filed on behalf of the appellants-claimants is taken on record.

This appeal is preferred against the judgment and award dated 2nd September, 2022 passed by learned Judge, Motor Accident Claims Tribunal, 1st Court, Contai in MAC Case No.1500 of 2015 granting compensation of Rs.5,37,000/- together with interest in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

As per report of the Additional Stamp Reporter dated 9th January, 2023, the appeal is preferred within the statutory period of limitation. Accordingly, the appeal is formally admitted and registered.

With the consent of parties, calling for of lower court records and preparation of paper books is dispensed with.

The brief fact of the case is that on 20th March, 2015 at about 16.30 hours while the victim was proceeding on foot keeping left side of Contai-Rasulpur pitch road, at that time offending vehicle bearing Registration No.WB-31/4757 in a rash and negligent manner dashed the victim from behind, as a result of which the victim sustained serious injuries all over her body and she died on the way to hospital. On account of sudden demise of the deceased, the claimants being the husband and two sons filed application for compensation of Rs. 6,00,000/- 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**14** respectively.

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

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.5,37,000/- 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. Subir Banerjee, learned Advocate appearing for the appellants-claimants submits that the learned Tribunal failed to consider the future prospect of 40% of annual income of the deceased. He further submits that the learned Tribunal granted Rs.25,000/- towards general damages which ought to have been Rs.70,000/-. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi & Others*** reported in ***2017 ACJ 2700***. He, in his usual fairness, submits that the multiplier should 15 instead of 16 adopted by the learned Tribunal in view of the observation of Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298***. In the light of his aforesaid submission, he prays for modification and enhancement of the compensation amount.

Mr. Rajesh Singh, learned Advocate appearing for the respondent no.1-Insurance Company submits that since at the time of accident, the victim was 39 years of age, hence following the observation of Hon'ble Supreme Court in *Sarla Verma (supra),* the multiplier should be 15 instead of 16.

Having heard the learned Advocates for the respective parties, the following issues have fallen for consideration. *Firstly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect and *secondly*, whether the claimants are entitled to general damages of Rs.70,000/- under the conventional heads and *lastly,* whether the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

With regard to the first issue of future prospect, it is found that the learned Tribunal did not consider the aspect of future prospect. However, following the proposition laid down by Hon'ble Supreme Court in *Pranay Sethi (supra)*, since at the time of accident, the victim was 39 years of age and self-employed, the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

With regard to general damages, it is found that the learned Tribunal granted Rs.25,000/-. However, following the observation 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 of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

So far as the multiplier is concerned, it is found that the learned Tribunal has adopted 16. However, following the observation of Hon'ble Supreme Court in *Sarla Verma* *(supra),* since at the time of accident, the deceased was 39 years of age, the multiplier should be 15 instead of 16.

Other factors have not been challenged in the appeal.

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

Calculation of Compensation

Monthly Income	Rs.4,000/-
Annual Income (Rs.4,000/- x 12)	Rs.48,000/-
Add: 40% of annual income towards future prospect (since the appellant was aged about 39+ years)	Rs.19,200/-
Total income	Rs.67,200/-
Less: 1/3rd towards personal and living expenses	Rs.22,400/-
	Rs.44,800/-
Multiplier 15 (Rs.44,800/- x 15)	Rs.6,72,000/-
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.7,42,000/-

Thus, the claimants are entitled to compensation of Rs.7,42,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till disposal. Admittedly, the claimants have received an amount of Rs.5,37,000/- together with interest in terms of order of the learned Tribunal.

Accordingly, the claimants are entitled to balance amount of compensation of Rs.2,05,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

Respondent No.1-Insurance Company is directed to deposit the balance amount 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 after making payment of Rs.40,000/- in favour of the appellant No.3, husband of the deceased towards spousal consortium, in equal proportion upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

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.)