31.03.2023
Ct no. 654
Sl. 3
(Ali)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 1427 of 2015
Astabuddin Gazi @ Aftaruddin @
Aptabuddin @ Aarfatab & Anr.
versus
Pranabananda Mondal & Anr.

Mr. Ashique Mondal
Mr. Anup Kumar Bag ...for the appellants/claimants.

Mr. Rajdeep Bhattacharjee
...for the respondent no. 2/insurance company.

This appeal is preferred against the judgment and award dated 29th June, 2015 passed by learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Alipore, 24-Parganas (South) in M.A.C. Case no. 13 of 2010 granting compensation of Rs.2,90,000/-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 15th February, 2010 at about 3:45 PM while the victim, 7 years old minor girl was returning home from school and when she reached near Paschim Raghunathpur Bus Stop on Diamond Harbour-Kakdwip Road at that time the offending vehicle bearing registration no. WB-19/5211 (Tata -1109) coming in a high-speed in rash and negligent manner dashed the victim from behind resulting in death of the victim on the spot. On account of sudden demise of the minor victim girl, the parents filed application for compensation of Rs.5,00,000/- under Section 166 of the Motor Vehicles Act, 1988 together with interest.

The claimants in order to establish their case examined three witnesses and produced documents which have been marked as **Exhibits 1 to 12** respectively.

The insurance company also adduced evidence of its investigator and produced documents which were marked **Exhibit A and B** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned tribunal granted compensation of Rs. 2,90,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988 in favour of the claimants.

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

Mr. Ashique Mondal, learned advocate for appellants-claimants submitted that the learned Tribunal erred in considering notional income of Rs.15,000/- in case of minor-deceased whereas it ought to have applied minimum wages for skilled labour as per the Kolkata Gazette published during the year 2010. In support of his contention he relied on a decision of the Hon'ble Supreme Court passed in ***Kajal –Versus- Jagdish Chand & Ors.*** reported in ***(2020) 4 SCC 413*** and ***Master Ayush –Versus- Branch Manager, Reliance General Insurance Company Limited and Anr.,*** reported in ***(2022)7 SCC 738***. He also placed ***Kolkata Extraordinary Gazette dated August 27, 2010.*** To further buttress his contentions he relied on the decision of Hon'ble Supreme Court passed in ***Kirti and Others versus Oriental Insurance Co. Ltd*** reported in ***2021 ACJ 1.*** He also relied on the decision of this Court passed in ***Md Raju & Anr versus United India Insurance Company Limited & Anorther (FMA 1391 of 2019).*** He further submitted that in ***Meena Devi versus Nunu Chand Mahato*** *reported in* ***2022 ACJ 2478*** the Hon'ble Supreme Court accepted notional income of Rs.30,000/- per annum as the income of the minor-deceased.

Further relying on the decision of Hon'ble Supreme Court in *Kajal's case (supra)* he indicated that in case of minor-deceased for selecting multiplier the 2nd Schedule of the Act should be taken into account but the learned tribunal took into account average age of the parents of the deceased for selecting multiplier.

As far as future prospect is concerned he relied on the decision of *Kajal's case (supra)* as well as *Master Ayush's case (supra)* where the Hon'ble Supreme Court has considered 40% of the annual income towards future prospect.

He further submitted that the general damages of Rs.30,000/- under the conventional heads should also be taken into account with escalation of 10% since 3 years have already elapsed following decision in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***.

In the light of his above submission, he prayed for enhancement of the compensation amount.

In reply to the contention raised on behalf of the appellants-claimants, Mr. Rajdeep Bhattacharya, learned advocate for the respondent no.2-insurance company submitted that since the deceased was a minor, the learned tribunal rightly took into account notional income of Rs.15,000/- per annum for assessment of compensation which does not call for any interference. In support of his contention he relied on the decision of the Hon'ble Supreme Court passed in ***Rajendra Singh & Ors. versus National Insurance Company Limited and Ors.,*** reported in ***(2020)7 SCC 256.*** Further relying on the decision of *Meena Devi (supra)* he submits at best the notional income may be considered at Rs.30,000/- in the facts of this case.

In view of the above submission he prays that the order of the learned Tribunal to be affirmed.

By order dated January 31, 2023 service of notice of appeal upon the respondent no.1, the owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Having heard the learned advocates for the respective parties, it is found that the appellants-claimants have thrown the challenge to the award precisely on four grounds; *firstly,* that the learned Tribunal erred in determining the income of the deceased without taking into consideration the minimum wages payable to a skilled labour prevalent at the relevant point of time, *secondly,* the learned Tribunal erred in selecting the multiplier basing on the average age of the parents of the deceased instead of adhering to 2nd Schedule of the Act and not considering the age of the deceased, *thirdly*, the claimants are entitled to future prospect at the rate of 40% of the annual income of the deceased and *lastly*, the claimants are entitled to general damages under the conventional head to the tune of Rs.30,000/- with escalation of 10% .

With regard to the first issue relating to determination of income of the deceased (Minor), it is found that the learned Tribunal has considered income of Rs.15,000/- per annum of the minor victim.

Although in *Kajal's Case (supra)* and Master *Ayush's Case (supra)* the Hon'ble Supreme Court has considered the income of the minor on the basis of minimum wages payable to skilled labour yet it is found that the facts are distinguishable with the case at hand and moreover both the cases arose out of injury case and not from death case.

The Hon'ble Supreme Court in *Rajendra's Case (supra)* did not accept the ratio *in Kajal's Case* due to aforesaid reasons.

In *Satender's Case (supra)* the Hon'ble Supreme court observed as follows.

> "*12. In cases of young children of tender age, in view of certainties amount, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their carrier are capable of proper determination on estimated basis. The reason is that at such an early age the uncertainties in regard to their academic pursues achievements in carriers and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore,*

neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

From the aforesaid observation of the Hon'ble Court it is evident that assessment of income of a minor-deceased is incapable to be made on estimated basis.

During the course of hearing both the learned advocates of the appellants-claimants as well as respondent No. 2 insurance company has relied on the decision of *Meena Devi (supra).* In the aforesaid report the Hon'ble Supreme Court has applied its decision passed in ***Kishan Gopal versus Lala*** reported in ***(2014) 1 SCC 244*** and accepted notional income of Rs.30,000/- as income of a child aged 12 years student of class 5 studying in a private school. Bearing in mind the observation of the Hon'ble Supreme Court in *Meena Devi (supra)* I am of the view that it would be reasonable to accept the notional income of Rs.30,000/- in case of minor deceased. For such reason the ratio in *Md. Raju* (*supra*) passed by the score is not applied to the present case.

The report in *Kirti (supra)* is factually different since the case before the Hon'ble Supreme Court related to determination of income of a home-maker and thus is distinguishable in facts.

With regard to multiplier, it is found that the learned Tribunal selected multiplier considering the age of the parents. However, in view of the decision of the Hon'ble Supreme Court passed in *Pranay Sethi (Supra)* and subsequent decision of Hon'ble Supreme Court in ***M/s. Royal Sundaram Alliance –Versus- Mandala Yadagari Goud,*** *reported in* ***(2019) 5 SCC 554***, it is now settled that age of the deceased is to be taken into consideration for selecting multiplier. Following the observation the Hon'ble Supreme court in *Kajal's case* the 2nd Schedule of the Act should be considered for selecting the multiplier. As per the 2nd Schedule since at the time of accident admittedly the victim was 7 years old, the multiplier of 15 should be taken into account.

With regard to future prospect I find substance in the submission of Mr. Mondol that an amount equaling to 40% of the annual income of the deceased minor should be taken in to account. Accordingly, bearing in mind the facts and circumstances of the case, the claimants are entitled to an amount equaling 40% of the annual income of the minor deceased towards future prospect.

So far as the general damages are concerned, following the observation of the Hon'ble Supreme Court in *Pranay Sethi's case (supra)* the claimants are entitled to damages amounting to Rs.30,000/- and 10% escalation on the aforesaid general damages.

The other finding of the learned Tribunal has not been challenged in the present appeal.

The compensation is calculated as hereunder.

Calculation of compensation

Income ………………………Rs. 30,000/-

Add: 40% future prospect .....Rs. 12,000/-
Rs. 42,000/-

Adopting multiplier 15 (Rs. 42,000/-x 15)
.... Rs.6,30,000/-

Add: General Damages ....Rs. 30,000/-
Add: 10% escalation...............................Rs. 3,000/-
Total Compensation................ Rs 6,63,000/-

It is informed that the claimants have already received an amount of Rs.2,90,000/- together with interest as per order of the learned Tribunal. Accordingly, the claimants are entitled to the balance amount of compensation of Rs.3,73,000/- (in equal proportion) together with interest at the rate of 6 per cent per annum from the date of filing of the claim application (i.e. 07.04.2010) till deposit.

The respondent no.2-insurance company is directed to deposit the aforesaid balance amount of compensation of Rs.3,73,000/- (in equal proportion) together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 07.04.2010) till deposit by way of Cheque with the learned Registrar General within a period of six weeks from date.

The appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, 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 as to cost.

All connected applications, if any, stands disposed of.

Interim orders if any, stands vacated.

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

(Bivas Pattanayak, J.)