

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 519 OF 2020

With

CAN 1 of 2020, CAN 2 of 2020

Sibani Parui

Versus

National Insurance Co. Ltd. & Anr.

For the appellant : Mr. Rajdeep Bhattacharya, Adv.

For the Respondents : Ms. Sucharita Paul, Adv.

Heard on : 28.08.2023

Judgment on : 26.09.2023

Ajay Kumar Gupta, J:

1. The appellant has filed this instant appeal against the judgment and award dated 20th November, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 4th Court, North 24-Parganas, Barasat, whereby the learned Tribunal awarded a compensation to the tune of Rs. 3,94,000/- to be paid within 30 days from the date of judgment and award. In default, to pay interest @ 7% per annum from the date of default till final realisation of the compensation amount in a death case filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”).

2. Mr. Bhattacharya, learned counsel for the appellant/claimant moved two applications. Firstly, the application for deletion of name of appellant no. 2 from the cause title of memo of appeal on account of her death. Appellant no. 1 is now only sole legal heir and representative of the victim. Appellant also appended the death certificate with the said application. Secondly, the application for condonation of delay of 378 days in filing the instant appeal. He further referred paragraphs 5 and 6 to show the causes for not filing appeal within the limitation as prescribed under Section 173(1) of the said Act. He prays for allowing both applications.

3. In addition, it is submitted that the grounds for challenge of the impugned judgment and award involves very simple issues. Actually, the learned Tribunal committed serious error in not allowing compensation under the head of future prospect and actual General damages. Ld Tribunal further wrongly selected the multiplier as 16 instead of 17 and interest to be paid 7% from the date of default till final realisation of the compensation amount though it ought to be allowed interest from the date of filing application till final realization.

4. It is further submitted that now it is settled principle of law that the claimant is entitled to future prospect, General damages and interest in view of various judgments pronounced by the Supreme Court. Ld advocate finally prays for enhancement of the compensation after considering all issues raised by him on the basis of the proposition laid down by the Hon'ble Supreme Court.

5. Per contra, learned advocate for the respondents/Insurance Co. raised objection to the prayer of the appellant/claimant for condonation of delay and further submitted that the learned Tribunal has rightly awarded compensation of Rs. 3, 94,000/- after considering the evidence led by the appellant/claimant before the learned Tribunal. So, there is no need to

interfere with the impugned judgment and award passed by the learned Tribunal.

6. Heard submission of both sides elaborately and on perusal of the applications as well as material available on the record, this Court finds the appellant/claimant No.2 has expired during the pendency of the instant appeal and appellant/claimant No.1 being the only legal heir/successor is already on record. Accordingly, her name being appellant/claimant No. 2 is stands deleted from the cause title of the memo of appeal.

7. So far as the application for condonation of delay is concerned, learned advocate referred paragraphs 5 and 6 to show that the appellant was prevented by sufficient cause for not filing appeal within the limitation as prescribed under Section 173(1) of the said Act. Upon perusal of the said application, it appears the appellant/claimant has explained the causes, are found sufficient and satisfactory. Thus, delay in filing appeal is hereby condoned. Accordingly, both applications filed by the applicant/claimant are stands allowed.

8. There is no dispute regarding manner of accident and death of victim due to motor traffic accident. The claim case was filed by the claimants to the effect that on 02.02.2013 at about 8 pm to 8.30 pm accident occurred at

Chapra Kalitala Bypass near Simulpur Oikya Sammilani under P.S. Habra due to share rash and negligent driving on the part of the driver of the offending vehicle bearing registration No. WB-25D 8244 while Swapan Parui was proceeding through the extreme left side of Chapra Kalitala Bypass towards market. When, he reached near Simulpur Oikya Sammilani, under P.S. Habra. At the material point of time, the vehicle bearing no. WB-25D 8244, all on a sudden, was proceeding with a very high speed, rashly and negligently and in a fraction of a moment, driver of the offending vehicle has lost his control over the said vehicle and knocked down and ran over Swapan Parui. As a result, Swapan Parui sustained serious injuries on his person and was removed to Habra Hospital, where the attending doctor declared him brought dead.

9. The appellant/claimant has impleaded the owner of the offending vehicle as respondent no. 2 and insurer –National Insurance Company Limited as respondent no. 1. Owner of the offending vehicle did not contest the claim case from the initial stage and the case proceeded ex parte against him from the beginning. Whereas, National Ins. Co. contested the case by filing written statement contending therein that the case is not maintainable and further denied and disputed all the allegations made by the claimant/appellant and finally prayed for dismissal of the case.

10. The Appellant/claimant has examined Sibani Parui as P.W. 1 and Mrinal Roy as P.W. 2 as eyewitness. P.W. 1 has narrated the case as resemble as the facts mentioned in the claim application and further filed various documents i.e. attested copy of PM report, death certificate of Swapan Parui, Insurance Policy, driving licence of the driver, Voter Card of the victim, Voter Card of the claimant/appellant etc. Those documents were marked as Exhibits 1 to 10 respectively. However, during cross-examination the Insurance Company fails to demolish her evidence. However, she admits she did not file any document to prove the monthly income of her husband. She also stated during cross-examination that she did not see the accident. She had heard about the manner of accident, which was occurred on 02.02.2013.

11. P.W. 2, the ocular witness stated he was standing beside Chapra Kalitala Bypass near Simulpur Oikya Sammilani under P.S. Habra and he saw the accident from his own eyes. He further stated due to rash and negligent driving of the driver of the offending vehicle bearing no. WB-25D 8244 lost his control over the vehicle and knocked down and ran over by Swapan Parui as a result he sustained serious injuries on his person and succumbed due to his injuries.

12. Respondent No.1/Insurance Company did not prefer to adduce any evidence on its behalf to rebut the case of claimants.

13. Learned Tribunal after scanning and appreciation of the evidence, finally came to conclusion that the accident was due to the rash and negligent driving of the driver of the offending vehicle bearing no. WB 25D 8244 (Mini Truck). It is not disputed by the respondent/insurance company that the accident was not occurred on the date and time and manner stated by the eye witness. As per appellant, compensation amount awarded by the Ld. Tribunal is very low. It ought to be more compensation.

Now, points emerge for considerations in the instant appeal are as follows:

- i. Whether appellant/claimant is entitled to get interest from the date of filing the claim application till realization of the awarded compensation.
- ii. Whether the appellant/claimant is entitled to get future prospect at the rate of 40% of his actual income.
- iii. Whether the claim is entitled to get general damages to the tune of Rs. 70,000/- instead of 10,000/-.
- iv. Whether the multiplier should be 17 instead of 16 as selected by the learned Tribunal.

14. So far as the issues raised by the appellant/claimant, this Court would like to rely decisions of the Hon'ble Supreme court passed in **National**

Insurance Co. Ltd Vs. Pranay Sethi & others as well as **Sarla verma and other vs. Delhi Transport Corporation and another.** Both judgments would play a vital role in deciding this present lis because the Hon'ble Supreme Court has laid down the propositions for awarding compensation under the head future prospect and General Damages and manner of selecting multiplier etc in favour of claimant, who suffered from the death of their near relative.

15. It is undisputed about the actual income of the victim at the time of accident and the manner of accident due the rash and negligent driving of the driver of the offending vehicle. It is also not disputed with regards to the deduction of 1/3rd on loss of income of the victim if had he been alive for his personal and living expenses to maintain himself.

16. Consequently, disputes are only regarding compensation towards future prospect, general damages, multiplier and interest in this case, where victim died due to motor traffic accident. The other findings and factors decided by the learned Tribunal have not been challenged by the learned Advocate for the appellant in this appeal. This Court, therefore, keeps on focus on those issues for consideration.

17. The Apex Court in a case **National Insurance Co. Ltd Vs. Pranay Sethi & others** ¹, specifically held that reasonable figures on conventional heads, namely, Loss of estate, Loss of consortium and funeral expenses should be Rs. 15,000/=, Rs. 40,000/= and Rs. 15,000/= respectively. I find substance in the submissions of learned advocate for appellant/claimant in this regard. Consequently, appellants are entitled to get those figures in the head mentioned above Rs. 15,000/= (as loss of estate), Rs. 40,000/= (as consortium) and Rs. 15000/= (as funeral expenses). Therefore, Rs.70, 000/= may be safely accepted as General damages as claimed by the appellants. The Ld. Tribunal only allowed total 10,000/= that is Rs. 5000/= each under the head of funeral expenses and consortium.

18. With regard to another issue raised by the appellant pertaining to entitlement of future prospect, it is found that the learned Tribunal did not grant any amount on this head. In this regard, the Hon'ble Supreme Court in the aforesaid **Pranay Sethi's case (supra)** has also laid down the proposition towards future prospect and method of calculation, *inter alia*, as follows:

“In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of

¹(2017) 16 SCC 680

25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The Established income means the income minus the tax component”.

19. In the light of above observation and proposition laid down by the Apex Court, appellants are also entitled to get an additional amount of 40% of the annual income of the deceased, who was below the age of 40 years towards future prospect in addition to General damages as aforesaid. This Court does not need to touch the findings of the Tribunal with regard to the actual income of deceased, which was taken as Rs. 3,000/- per month comes to Rs. 36,000/= per annum.

20. Ld. Advocate appearing on behalf of the appellant vociferously submitted that the actual age of the victim was 29 years old at the time of accident. To substantiate his contention, he referred voter Identity card (Marked as ext.8) but the Ld Tribunal wrongly considered his aged was 35 years on the basis of P.M. report which was put on verbal instruction of party but it is incorrect. It reveals from the material available on record that claimants have mentioned aged of the victim was 29 years in their claim application; P.W.1 also stated in her evidence, the victim was 29 years and

further exhibited voter Identity card to show his actual age. So, there is no doubt about the actual aged was 29 years at the time of accident on the basis of voter Identity card because the said card was prepared long ago. Not for the purpose of getting more compensation. Thus, question of reducing age of the victim does not arise at all. Accordingly, aged of the victim can be accepted as 29 years old at the time of his accident/death. Hence, multiplier would be 17 considering the age group of the victim falls between 26 to 30 years.

In view of observation made in **Sarla verma and other vs. Delhi Transport Corporation and another**² and later Larger Bench of the Hon'ble Supreme court affirmed the said manner of selection multiplier in **National Insurance Co. Ltd Vs. Pranay Sethi & others** by indicating therein that the selection of multiplier shall be as indicated in the paragraph in Sarla verma case as inter alia as follows:

- M-18 for (15 to 25 years)
- M-17 for (26 to 30 years)
- M-16 for (31 to 35 years)
- M-15 for (36 to 40 years)
- M-14 for (41 to 45 years)
- M-13 for (46 to 50 years)
- M-11 for (51 to 55 years)
- M-9 for (56 to 60 years)
- M-7 for (61 to 65 years)

² (2009) 6 SCC 121

M-5 for (66 to 70 years)

21. So far as the interest is concerned, the claimant is entitled to get interest from the date of filing of the claim application till final realization. Here, the Ld. Tribunal wrongly not allowed the interest from the date of filing claim application rather it has been allowed interest @ 6% from the date of default in payment of the compensation amount. This court gets confidence while allowing interest from the date of filing claim application from the observation made by the Hon'ble High Court at Calcutta in a Case **Rekha Dutta & Ors. vs. Ram Avatar Lohia & Anr.**³ where this Court held that:

“In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of Alok Shanker Pandey vs. Union of India and Ors. reported in AIR 2007 SC 1198:

“It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on

³ 2009 (3) TAC (Cal) 783

the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

(Emphasis supplied)

22. Keeping in mind the above observation and findings of this Court, the calculation of compensation is re-assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3000/-
Annual Income (Rs. 3000/- X 12)	Rs. 36,000/-
Add: Future prospect @ 40% of the income of victim	Rs. 14,400/-
Total Income	Rs. 50,400/-
Less: deduction 1/3 rd of the total Annual income (towards personal and	Rs. 16,800/-

living expenses)	
Total income after deduction	Rs. 33,600/-
Total loss of Dependency Rs. 33,600/- X 17 (Multiplier)	Rs. 5,71,200/-
Add: Loss of estate	Rs. 15, 000/-
Add: Funereal Expenses	Rs. 15, 000/-
Add: Loss of consortium	Rs. 40, 000/-
Total compensation	Rs. 6,41,200/-

23. Thus, the appellants/claimants are further entitled to get enhanced compensation amount to the tune of Rs. 2, 47,200/= (Rs. 6, 41,200/- minus Rs. 3, 94,000/- (compensation amount already awarded by the Ld. Tribunal) which shall carry interest @ 6% per annum on total amount of compensation amount from the date of filing of the claim application i.e. from 02.03.2013 till final payment.

24. It is submitted by the Insurance company that the awarded amount of Rs. 3, 94,000/= has already received by the claimants. If that be so, then claimants will be also entitled to interest @ 6% on the awarded amount of

Rs.3,94,000/= from the date of filing claim application i.e. from 02.03.2013 till final payment of aforesaid compensation amount.

25. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2,47,200/= (Rupees two lakhs forty-seven thousand two hundred) and the interest as indicated above by way of cheque before the office of learned Registrar General, High Court Calcutta within a period of 4 weeks from date.

26. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced amount and interest as indicated above, shall release the amount in favour of the appellant /claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 20th November, 2019.

27. With the above observations, the instant appeal stands disposed of without order as to costs.

28. Consequently, **CAN 1 of 2020** and **CAN 2 of 2020** are, also thus, disposed of with the above observations. Department is directed to delete the

name of appellant no. 2 from the memo of appeal before communication of this judgment and award to the learned Tribunal for information.

29. The impugned judgment and award of the learned Tribunal dated 20th November, 2019 is modified to the aforesaid extent only.

30. Let a copy of this Judgment be sent back to the learned Tribunal forthwith for information.

31. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

32. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)