

12.10.2023
Ct. no.654
Sl. Nos.169
sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**F.M.A. 152 of 2021
(CAN 2 of 2021 & CAN 3 of 2021)**

**Dipali Santra & Ors.
Vs.
Sankar Chandra Paul & Anr.**

Mr. Soujanya Bandyopadhyay
..for the appellants-claimants

Mr. Sanjay Paul
Ms. Jaita Ghosh
..for the respdt.no.2-insurance Co.

This appeal is preferred against the judgement and award dated 16th January, 2020 passed by learned Judge, Motor Accident Claims Tribunal, 4th Bench, City Civil Court, Calcutta in M.A.C. Case No. 246 of 2017 granting compensation of Rs.4,64,000/- 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 17th March, 2016 at about 10-30/11-00 hours while the victim was proceeding on his bicycle towards Gourhata More, at that time the offending vehicle bearing registration no.WB-23D/3795 coming from opposite direction in a rash and negligent manner dashed the victim near Arambagh Hospital More, as a result of which the victim sustained grievous injuries. Immediately, the victim was removed to Arambagh

S.D. Hospital where he was declared brought dead by the attending doctor. On account of sudden demise of the victim, the claimants being the widow, minor son and mother of the deceased filed application for compensation of Rs.7,75,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibit 1 to 14** respectively.

The respondent no.2-insurance company adduced evidence of one witness and produced documents, which have been marked as **Exhibits A & B** respectively.

By order dated 15th June, 2023, service of notice of appeal upon the respondent no.1, owner of the offending vehicle, has been dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.4,64,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act. 1988.

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

Mr. Soujanya Bandopadhyay, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim and failed to consider the evidence adduced by the claimants in support of income of the victim. The victim at the time of accident used to work in “*Sainee Colour Concern*” and the husband of the proprietor Souren Ghosh (PW-3) categorically deposed that the victim used to receive salary of Rs.6,000/- per month. Such evidence of PW-3 should be taken into account for determining the income of the victim. He further submits that the learned Tribunal failed to consider the entitlement of the claimants towards future prospect of 40% of annual income of the victim in view of the decision of Hon’ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **(2017) 16 SCC 680**. He fairly submits that since at the time of accident the victim was 38 years of age, the multiplier should be 15 instead of 16 adopted by the learned Tribunal. Further the claimants are entitled to general damages under the conventional heads of Rs.70,000/- instead of Rs.80,000/- granted by the learned Tribunal.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Sanjay Paul, learned advocate for the respondent no.2-insurance company

submits that the claimants have failed to prove the income of the victim at Rs.6,000/- per month by any cogent evidence. Referring to the Cross Examination of PW-3, he submits that no document could be produced by the witness showing that the victim was an employee of “*Sainee Colour Concern*” or that the victim used to receive salary of Rs.6,000/- per month. In the absence of such documentary evidence, the income determined by the learned Tribunal should not be interfered with. So far as the grant of compensation of future prospect and general damages are concerned, he submits that the proposition of Hon’ble Supreme Court laid down in *Pranay Sethi (supra)* should be followed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the victim. *Secondly*, whether the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect. *Thirdly*, whether the multiplier should be 15 instead of 16 adopted by the learned Tribunal. *Lastly* the claimants are entitled to general damages of Rs.70,000/- under the conventional heads.

With regard to the first issue relating to determination of income of the deceased, it is found

that the learned Tribunal has determined the income of the victim at Rs.6,000/- per month. The claimants in their claim application have contended that the victim at the time of accident used to work in "*Sainee Colour Concern*" and used to receive salary of Rs.6,000/- per month. In order to establish the income of the victim, the claimants have adduced the evidence of one Souren Ghosh (PW-3), husband of the proprietor of "*Sainee Colour Concern*". Though, PW-3 in his evidence in chief deposed that the victim used to work in their shop and received salary of Rs.6,000/- per month, however, in cross examination he admitted that he has no document to show that the victim was an employee in "*Sainee Colour Concern*" or the victim used to receive Rs.6,000/- per month. He also admitted that there is no Attendance Register of the employee of the said concern. Such being the position of evidence of PW-3 cannot be accepted in the absence of documentary evidence of employment and income of the victim in the said concern. Accordingly, the claimants have failed to establish the avocation and income of the victim. Be that as it may, since the accident has taken place in the year 2016, bearing in mind the economic factors and prices of essential commodities prevalent at that time, the income of the victim at Rs.5,000/- per

month should be reasonable and appropriate in the facts and circumstances of this case.

With regard to the second issue relating to entitlement of future prospect, it is found that the learned Tribunal did not grant future prospect while assessing the compensation. At the time of the accident, the victim was 38 years of age and presumably self-employed and hence following following the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)* the claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

So far as the multiplier is concerned, it is found that the learned Tribunal adopted multiplier of 16. However, since the victim at the time of accident was 38 years of age, following the observations in ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in **2009 (6) SCC 121**, the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

So far as the general damages are concerned, it is found that the learned Tribunal has granted Rs.80,000 under the general damages. However, following the observations 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 to the tune of Rs. 15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid factors, calculation of compensation is made hereunder:

Calculation of Compensation

Monthly income	Rs.5,000/-
Annual income (Rs.5,000/- x 12)	Rs.60,000/-
Add: 40% of the annual income towards future prospect	Rs.24,000/-
	Rs.84,000/-
Deduction: 1/3 rd towards personal and living expenses	Rs.28,000/-
	Rs.56,000/-
Multiplier 15 (Rs.56,000/- x 15)	Rs.8,40,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total	Rs.9,10,000/-

Thus, the appellants-claimants are entitled to compensation of Rs.9,10,000/- together with interest @ 6% per annum from the date of filing of the claim application (18.04.2017) till payment.

It is informed that the claimants have already received a sum of Rs.4,64,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.4,46,000/- together with interest @ 6% per annum from the date of filing of the claim application (18.04.2017) till payment.

The respondent no.2-insurance company is directed to deposit the balance amount of compensation and interest as indicated above, by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of balance amount of compensation and interest, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in equal proportion in favour of the appellants-claimants, after making payment of Rs.40,000/- in favour of the appellant no.1, widow of the deceased, towards spousal consortium, upon satisfaction of their identity and payment of balance court fees, if not already paid.

The appellant no.1, being the mother and natural guardian of the minor appellant no.2, shall receive the share of the said minor and shall keep the same in a fixed deposit scheme of any nationalized bank or post office till attainment of majority of the said minor.

With the above 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, are also 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 Court below for information in accordance with the rules.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)