01.08.2023
Ct. no.3
Sn/19

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

FMAT(MV) 3 of 2023

Tanjina Khatun & Ors.
Vs.
The New India Assurance Co. Ltd. Ors.

Mr. Gobinda Saha
Mr. Tamal Kumar Sen
Mr. Milan Chandra Laskar
Ms. Priyanka Dey
…for the appellants-claimants

Mr. Rishin Chakraborty
..for the respdt.no.1-insurance Co.

This appeal is preferred against the judgment and award dated 26th September, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd Special Court, Jalpaiguri in MAC case no.254 of 2021 granting compensation of Rs 3,96,700/- in favour of claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 4th March, 2021 at about 6-30 p.m. while the victim was proceeding towards Charakdangi from his residence by one bicycle at that time the offending vehicle bearing registration no. WB-72X-8893 dashed the victim from his behind, as a result of which the victim sustained grievous injuries and was taken to Jalpaiguri Superspeciality Hospital where the attending the Doctor declared him dead. On account of sudden demise of the deceased, the claimants being the widow, son and daughters of the deceased filed application for compensation of Rs. 13,76,800/- together with interest 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 **7** respectively.

The appellant-insurance Company also adduced evidence of one witness.

Learned advocate for appellants-claimants submits that the respondent no.2, owner of the offending vehicle, though filed written statement but did not contest the claim application, hence service of notice of appeal upon the said respondent be dispensed with. In view of such submission, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.3,96,700/- 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. Gobinda Saha, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim at Rs.3,300/- per month whereas it ought to have determined the income at Rs.12,000/- per month, since at the time of accident the victim was carrying on business of selling fruits. In support of his contentions, he relies on the following decisions:

i. ***Muhammed versus United India Insurance Co. Ltd.*** reported in ***2023 ACJ 894***

ii. ***Sunita Tokas & Anr. versus New India Assurance Co. Ltd. & Anr.*** reported in ***2019 (4) T.A.C. 357 (S.C.)*** and

iii. ***Royal Sundaram Alliance Insurance Co. Ltd. versus Sulekha Mondal (Adhikary) & Ors.*** reported in ***2019 (3) T.A.C. 68 (Cal)***

He further submits that the claimants are also entitled to an amount equivalent to 10% of the annual income of the deceased towards future prospect in view of the decision of Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. Moreover, the claimants are entitled to interest on the compensation amount in terms of Section 171 of the Motor Vehicles Act, 1988.

In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to his aforesaid submissions, Mr. Rishin Chakraborty, learned advocate for the respondent no.1-insurance company submits that since the claimants failed to establish the income of the victim, hence, the notional income is to be considered as per settled proposition of law. The notional income of the victim in the aforesaid facts and circumstances of the case can be considered at Rs. 3,000/- per month but in no event the same should exceed Rs. 5,000/-. To buttress his contentions, he relies on the following decisions of the Hon'ble Supreme Court:

i. ***Nutan Rani & Anr. versus Gurmail Singh & Ors.*** reported in ***2018 (3) T.A.C. 690*** and

ii. ***Mehmooda Bee and Ors. versus National Insurance Co. Ltd.*** reported in ***2023 ACJ 329***

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 victim. *Secondly*, whether the claimants are entitled to an amount equivalent to 10% of the annual income of the deceased towards future prospect and *lastly,* whether the claimants are entitled to interest on the compensation amount.

With regard to the first issue, it is found that the learned Tribunal has determined the income of the deceased at Rs.3,300/- per month. The claimants in the claim application as well as through evidence of PW-1-wife of the deceased has claimed the income of the deceased to be Rs.12,000/- per month by carrying on business of selling fruits. It is true that the claimants have not produced any documents in support of business of the victim. Mr. Saha, learned advocate for the appellants-claimants relying on the decisions of *Muhammed (supra)*, *Sunita Tokas (supra)* and *Sulekha Mondal (Adhikary) (Supra)* has strenuously argued that the income of the victim should be considered at Rs.12,000/- per month.

In *Muhammed (supra)*, three cases arising out of the same accident went up to Hon'ble Supreme Court in appeal. In one appeal, the victim travelled abroad and worked for some time and the monthly income was taken at Rs. 9,000/- and in other appeal, the victim was a homemaker and the income was considered at Rs. 6,000/- per month and in the another appeal, enhancement was made keeping in mind the trauma undergone by the parents and siblings.

In *Sunita Tokas (supra)*, the victim was a trained swimmer who had won State Level competition and considering such circumstances, the notional income of the deceased was considered at Rs.12,000/- per month.

In *Sulekha Mondal (Adhikary) (Supra),* the victim was a Gram Chikitshak and his income was determined at Rs. 9,000/- resorting to certain guesswork.

The decisions of the Hon'ble Supreme Court cited on behalf of the insurance company, namely, *Nutan Rani (supra)* and *Mehmooda Bee (supra)* show that the income of victim of Rs.3,000/- and Rs.5,000/- respectively has been determined by the Hon'ble Court.

The above precedents show determination of income has been made on the basis of facts before the Court. No straight jacket formula can be applied to determine income. There cannot be any quarrel that each case has to be dealt with in its own merits and facts involved. It is true that no direct evidence with regard to income of the deceased is forthcoming. Be that as it may, it is not in dispute that the victim was working for his livelihood, hence some amount of guesswork can be resorted for determining the income of the victim. The income of the victim of Rs. 12,000/- as claimed by the claimants appears to be exorbitant. In ***Sri Ramachandrappa versus The Manager, Royal Sundaram Alliance Insurance Company Limited*** reported in ***(2011) 13 SCC 236***, the Hon'ble Supreme Court observed as follows:

> *"14. . . . We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time. . . ."*

Bearing in mind the aforesaid proposition and also keeping in mind the economic factors and prices of the essential commodities prevalent at the time of accident in the year 2021, I am of the opinion that an amount of Rs.6,000/- per month should be reasonable so far as the income of the victim is concerned.

With regard to the second issue, it is found that the learned Tribunal did not grant any amount towards future prospect. However, since the victim was self-employed and was 55 years of age, following the decision of Hon'ble Supreme Court in *Pranay Sethy (supra)* the claimants are entitled to 10% of the annual income of the deceased towards future prospect.

Coming to the last issue, it is found that the learned Tribunal did not grant any interest on the compensation amount. However, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application in terms of the Section 171 of the Motor Vehicles Act, 1988.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.6000/-
Annual income (Rs.6000/- x 12)	Rs.72,000/-
Add: 10% of the annual income towards future prospect	Rs.7,200/-
	Rs.79,200/-
Deduction : 1/4th towards personal and living expenses	Rs.19,800/-
	Rs.59,400/-
Multiplier 11 (Rs.59,400/- x 11)	Rs.6,53,400/-
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.7,23,400/-

Thus, the claimants are entitled to compensation of Rs. 7,23,400/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

Admittedly, the claimants have already received an amount of Rs. 3,96,700/- in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 3,26,700/- together with interest @ 6% per annum from the date of filing of the claim application till deposit. The claimants are also entitled to interest @ 6% per annum on the compensation amount of Rs. 3,96,700/- awarded by the learned Tribunal from the date of filing of the claim application till deposit was made before the learned Tribunal.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs. 3,26,700/- and the interest as indicated above before the learned Tribunal within a period of six weeks from date by way of separate cheques in the names of the respective appellants in the proportion of 1/2 of the amount in favour of the appellant no.1 and remaining amount in equal shares in favour of the appellant nos. 2 to 4 respectively.

The 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 balance amount of compensation and interest as indicated above, the learned Tribunal shall deliver the cheques in favour of the appellants-claimants, 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 is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)