03.08.2023
Ct. no.3
Sn/18

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

FMA 16 of 2023

Kalpana Bhowal & Ors.
Vs.
United India Insurance Company Limited & Anr.

Mr. Gobinda Saha,
Mr. Tamal Kr. Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey,
Mr. Sanghai Chowdhury,
…for the appellants-claimants

Mr. Pasupati Nath
…for the respondent-insurance Co.

This appeal is preferred against the judgment and award dated 16th January, 2023 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd Special Court, Jalpaiguri in MAC case No. 177 of 2019 granting compensation of Rs. 39,92,152/- in favour of claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 7th May, 2019 at about 05-30 p.m. while the victim was returning to his residence from Malbazar by vehicle bearing registration no. WB-71A-0475 (Bus), at that time, such vehicle met an accident with another vehicle, as a result of which, the victim sustained grievous injuries on his person and he was immediately shifted to Malbazar Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the mother, widow and two minor daughters of the deceased filed application for compensation of Rs.46,42,464/-. During the pendency of the claim application, the widow of the deceased expired and her name has been expunged therefrom.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **7** respectively.

The respondent no.1-insurance company did not adduce evidence.

By order dated 5th July, 2023, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, has been dispensed with since she did not contest the claim application.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 39,92,152/- 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 deceased by deducting House Rent Allowance, Medical Allowance along with Professional Tax from the gross monthly income whereas it ought to have deducted only the Professional Tax to calculate the actual monthly income. He further submits that that learned Tribunal failed to grant interest on the compensation amount from the date of filing of the claim application. In the light of his aforesaid submissions, he prays for enhancement of compensation amount.

In reply to the contention raised on behalf of the appellants-claimants, Mr. Pasupati Nath, learned advocate for the respondent no.1-insurance company submits that the interest on the compensation amount though may be granted but the future prospect shall not carry interest since future prospect is with regard to probable income to be received in the future and thus there is no requirement to compensate the claimants by way of future interest for loss that is occur in the future. In support of his contentions, he relies on the following decisions:

i. ***Oriental Insurance Company Limited versus Smti Rumi Barman and 2 Ors.***

in ***MACApp./77/2017*** of Gauhati High Court, and

ii. ***National Insurance Company Limited versus Mst. Aisha Bano & Ors.*** in ***Mac App No.33/2022*** of High Court of Jammu & Kashmir and Ladakh

In reply, Mr. Saha, learned advocate for the appellants-claimants submits that 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***, the claimants are entitled to interest on the future prospect since the same is part of income of the victim.

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 interest on the compensation amount only barring future prospect.

With regard to the first issue, it is found that the learned Tribunal calculated the actual monthly income by deducting House Rent Allowance, Medical Allowance and Professional Tax from the gross monthly income of the victim. The actual income is to be calculated by deducting the tax component namely, Professional Tax and Income Tax from the gross income. From the pay slip **(Exhibit 7)**, it is found that the total earnings of the victim in the month of April, 2019 just prior to the accident was Rs. 31,404/- and Professional Tax paid Rs. 150/-. Therefore, the actual monthly income should be Rs. 31,404/- less Rs. 150/- which comes to Rs. 31,254/-.

With regard to the second issue, it is found that the learned Tribunal did not grant interest on the compensation amount. In terms of Section 171 of the Motor Vehicles Act, 1988, the claimants are entitled to interest on the compensation amount.

It has been strenuously argued on behalf of the respondent no.1-insuranc company referring to the decisions of *Smti Rumi Barman (supra)* and *Mst. Aisha Bano (supra),* there cannot be interest on future prospect since such amount is to accrue in future.

While dealing with the issue of future prospect the Hon'ble Supreme Court in *Pranay Sethi (supra)* at paragraph 57 of the decision has observed as follows which is reproduced hereunder:

> *"57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such*

determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit

> *includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."*

The Hon'ble Supreme Court in order to provide just compensation having uniformity of approach approved for standardization which in its ambit includes addition of future prospects on the present proven income. Accordingly, the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. Therefore, future prospect is not to be recorded as probable income which is to be received in the future. The principle laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* is to asses just compensation on the foundation of fairness, reasonableness and equitability. It is pertinent to note that while dealing with future prospect, the Constitution Bench in the aforesaid report never observed that such additional amount of future prospect shall not carry interest. In view of proposition of Hon'ble

Supreme Court, I most humbly differ from the observation of Gauhati High Court in *Smti Rumi Barman (supra)* and the observation of High Court of Jammu & Kashmir and Ladakh in *Mst. Aisha Bano (supra).* For the aforesaid reasons, the argument advanced by Mr. Nath, learned advocate for the respondent no.1-insurance company is not acceptable.

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.31,254/-
Annual income (Rs.31,254/- x 12)	Rs.3,75,048/-
Add: 30% of the annual income towards future prospect	Rs.1,12,514/-
	Rs.4,87,562/-
Less: 1/3rd towards personal and living expenses	Rs.1,62,521/-
	Rs.3,25,041/-
Multiplier 13 (Rs.3,25,041/- x 13)	Rs.42,25,533/-
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.42,95,533/-

Thus, the claimants are entitled to compensation of Rs. 42,95,533/- together with interest @ 6% per annum from the date of filing of the claim application (11.06.2019) till payment.

It is informed that the claimants have already received an amount of compensation of Rs.39,92,152/- in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to Rs.3,03,381/- together with interest @ 6% per annum from the date of filing of the claim application (11.06.2019) till payment. The claimants are also entitled to interest @ 6% per annum on the compensation amount of Rs.39,92,152/- granted by the learned Tribunal from the date of filing of the claim application (11.06.2019) till the date of deposit of the compensation amount before the learned Tribunal.

The appellants -claimants are directed to deposit *ad valorem* Court fees on the balance amount of compensation assessed, if not already paid.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation together with interest by way of cheque before the learned Registrar, High Court Circuit Bench at Jalpaiguri, within a period of six weeks from date.

Upon deposit of the balance amount of compensation and interest as indicated above, the learned Registrar, High Court Circuit Bench at Jalpaiguri shall release the aforesaid amount in favour of the appellants-claimants in equal shares, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The appellant no.1, being the grandmother of the minor appellant nos. 2 & 3 shall receive the share of the minors on their behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office until the attainment of majority of the said minors.

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.

Let a copy of this order along with the lower court records be sent down to the learned Tribunal for information in accordance with rules.

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

(Bivas Pattanayak, J.)