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**CALCUTTA HIGH COURT**
**IN THE CIRCUIT BENCH AT JALPAIGURI**
**CIVIL APPELLATE JURIDICTION**

**FMAT (MV) 35 of 2022**

**Santebala Roy @ Ray & Ors.**
**-VS-**
**The United India Insurance Company Ltd. & Anr.**

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

Mr. Bipul Ranjan Bhattacharjee
... for the respondent no.1- insurance company

This appeal is preferred against the judgment and award dated 31st October, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd (Special) Court, Jalpaiguri in MAC Case No. 457 of 2021 granting compensation of Rs. 13,25,654/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 15th August, 2021 at about 8 p.m. while the victim was proceeding towards his workplace by riding on a bicycle and when he reached near Simulguri Bridge under P.S. N.J.P., at that time the offending vehicle bearing registration no. WB-72E/9916 in high speed and in a rash and negligent manner dashed the victim from behind as a result of which the victim sustained severe injuries on his person. Immediately, the victim was taken to Siliguri Hospital wherefrom he was shifted to Anandalok Nursing Home, Siliguri where he succumbed to his injuries and died on 16th August, 2021. On account of sudden demise of the victim, the claimants being the widow, three sons and two daughters filed application for compensation of Rs. 21,27,629/- 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 **8** respectively.

The respondent no. 1-insurance company also adduced the evidence of one witness.

Learned advocate for the appellants submits of dispensing with service of notice of appeal upon respondent no. 2, owner of the offending vehicle since he did not contest the claim application in spite of filing written statement. 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 the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 13,25,654/- 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, the claimants have preferred the present appeal.

Mr. Gobinda Saha, learned advocate for the appellants-claimants submits that the learned Tribunal erred in adopting the multiplier of 8 whereas it ought to have adopted the multiplier of 11, since at the time of accident, the victim was 55 years of age. He further submits that the claimants are also entitled to an amount equivalent to 15% of the annual income of the deceased towards future prospect. Moreover, the claimants are entitled to interest on the compensation amount since the learned Tribunal did not grant the same in terms of Section 171 of the Motor Vehicles Act. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Bipul Ranjan Bhattacharjee, learned advocate for the respondent no. 1-insurance company submits that there are no documentary evidence produced in support of the age of deceased. He further submits that the interest on the compensation amount as claimed by the claimants should be restricted to 6% per annum in view of prevailing banking rate of interest.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in adopting the multiplier of 8 instead of 11; *secondly*, whether the claimants are entitled to an amount equivalent to 15% 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 noted that as per the post mortem report (**Exhibit-5**) the age of the victim is 55 years. Save and except post mortem report, there is no other evidence in support of the age of the victim. There is no other contrary evidence adduced by the respondent no. 1-insurance company challenging the age as noted in the post mortem report. Thus, the determination of age of the deceased must proceed on basis of the post mortem report (**Exhibit-5**). Bearing in mind the age of the victim to be 55 years and following the proposition laid down by the Hon'ble supreme Court in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***2009 ACJ 1298***, the multiplier should be 11 instead of 8 adopted by the learned Tribunal.

So far as the entitlement towards future prospect is concerned, it is found from the pay slip (**Exhibit-7**) that the victim at the time of accident was a casual Group-D employee under Divisional Forest Officer, Baikunthapur Division. The details of such pay slip suggest that the victim was a permanent employee. Keeping in mind the age of the victim to be 55 years and his permanent employment and following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimants are entitled to an amount equivalent to 15% 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 and such interest has been granted as a default clause. However, in terms of Section 171 of the Motor Vehicles Act, the claimants are entitled to interest on the compensation amount. The rate of interest on compensation amount shall be @ 6% per annum in view of prevailing rate of banking interest.

The other factors have not been challenged in this appeal.

Bearing in mind the aforesaid, the calculation is made hereunder:

**Calculation of Computation**

| | |
|---|---|
| Monthly Income | Rs.17,836/- |
| Yearly Income<br>(Rs.17,836/- x 12) | Rs.2,14,032/- |
| Add: 15% of the yearly income towards Future Prospect | Rs.32,105/- |
| | Rs.2,46,137/- |
| Less: 1/3rd towards personal and living expenses | Rs.82,046/- |
| | Rs.1,64,091/- |
| Multiplier 11<br>(Rs. 1,64,091/- x 11) | Rs.18,05,001/- |
| Add: General Damages<br>Loss of estate: Rs.15,000/-<br>Loss of consortium: Rs.40,000/-<br>Funeral expenses: Rs.15,000/- | Rs. 70,000/ |
| Total amount | Rs.18,75,001/- |

Thus, the claimants are entitled to compensation of Rs. 18,75,001/- together with interest @ 6% per annum from the date of filing of the claim application (09.11.2021) till payment.

Admittedly, the claimants have already received an amount of Rs. 13,25,654/- in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 5,49,347/- together with interest @ 6% per annum from the date of filing of the claim application (09.11.2021) till payment. The claimants are also entitled to interest @ 6% per annum on the compensation amount of Rs. 13,25,654/- awarded by the learned Tribunal from the date of filing of the claim application (09.11.2021) 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. 5,49,347/- 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 6 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 judgement 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**.)