IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 790 of 2012

Smt. Mahamaya Chakraborty & Anr.

Vs.

Mr. Soumen Mallick & Anr.

For the Appellants	:	Mr. Krishanu Banik, Mr. Tapan Kumar Jana, Mr. Tathagata Banik.
For the Respondent No.1/ Owner	:	None.
For the Respondent No.2/ Insurance Company	:	Mr. Rajdeep Bhattacharyya.
Hearing concluded on	:	26.09.2024
Judgment on	:	26.09.2024

<u>Shampa Dutt (Paul) , J.</u>

1. The present appeal has been preferred by the appellants against the Judgment and Order dated 14.12.2009 passed by learned Additional District & Sessions Judge, 4th Court-in-Charge of 1st Court at Alipore, South 24 Parganas in Motor Accident Claim Case No.175 of 2002, **under Section 166 of the M.V Act.**

2. **<u>The facts</u>** :-

> *"........On 15.09.2001, victim, Dilip Kumar Chakraborty was traveling in Bus No.WB-19/6147 from Kharibaria to Taratala and when it reached near Hindustan Floors and Tiles Co. on D. H. Road at 7.30 pm, the driver suddenly applied brake to the Bus which was moving in high speed and in rash and negligent manner causing serious injuries to his head and other parts of the body. The victim was given first aid at Kasturi Medical Research Centre (Pvt.) Ltd., Thakurpukur and thereafter, he was taken to S.S.K.M Hospital where he was kept under observation on the same day and finally he was taken to Calcutta Medical Research Institute Hospital where he was admitted on 16.09.2001 and discharged on 11.11.2001. His treatment continued at his residence but ultimately he succumbed to his injuries on 17.12.2002. It is alleged that due to rash and negligent driving of the driver of the offending vehicle, accident was caused. Hence, this claim of compensation..........."*

3. It is stated that the instant case was filed by the victim himself but during the pendency of the case, he died and the present petitioners have been substituted as the claimants (3).

4. **Mr. Soumen Mallick/OP No.1**, owner of the offending vehicle did not choose to contest the claim of the petitioner.

5. **New India Assurance Company Ltd./OP No.2**, the insurer of the offending vehicle contested the case by filing written objection, denying all material statements made in the claim application.

6. It appears that, this case was first disposed of by the learned Judge, M.A.C Tribunal, (1st Additional District Judge), Alipore, South 24 Parganas. Learned Tribunal Judge was pleased to grant compensation of Rs.2,78,000/- to the petitioners and also Rs.9,500/- by way of funeral expenses, loss of consortium and loss of estate. Learned Tribunal was pleased to further grant Rs.9,63,736.42p by way of entire medical expenditure and thereby granted a **total compensation of Rs.12,51,235/-** to the petitioners.

7. Being aggrieved by and dissatisfied with the impugned judgment, OP No.2/Insurance Company preferred an appeal being **F.M.A.T No.1165 OF 2008** and the Hon'ble High Court by an order dated 14.08.2009 was pleased to set aside the said award and **remanded the case** back giving liberty to the OP No.2 to adduce evidence.

8. As directed by the Hon'ble Court, the learned Tribunal by the judgment under appeal allowed the parties to adduce evidence. The Claimants adduced **13 witnesses** and filed document which was marked **Exhibit-1 to Exhibit-21**.

9. The opposite party/Insurance Company examined **one witness** as **DW-1.**

10. **On conclusion of the hearing the Tribunal held as follows :-**

"........MACC No. 175 of 2002

Dated:-14th December, 2009

........Considering the age of the victim, his income and also having regard to the fact that the victim had to undergo a prolonged treatment in one hospital or the other, I propose to grant a sum of Rs.1,00,000/- by way of pain and sufferings under Section 166 of the M.V. act. Therefore, the petitioners are entitled to a total compensation of Rs.5,35,186/- under Section 166 of the M.V. Act which includes interim compensation u/s 140 M.V. Act. Since, the petitioners have already received Rs.50,000/- as interim compensation under Section 140 of the M.V. Act. Petitioners are entitled to a compensation of Rs.4,85,186/-. Besides this the petitioners are also entitled to interest @ 6% p.a on the aforesaid amount of compensation from the date of filing of the case till realization..............

Sd/-
Tribunal Judge cum Addl. Dist. Judge,
4th Court, Alipore, South 24 Parganas....."

11. Being aggrieved, the present appeal has been preferred by the claimants on the grounds:-

i) That the learned tribunal did not consider the actual income of the claimant and was wrong in not considering the total amount of medical expenditure which was approved to be an amount of Rs.9,36,736.42p due to the prolonged treatment of the deceased which he suffered due to accident in the present case(more than one year) and that the first total award granted was Rs.12,01,235/-.

ii) That the learned tribunal without considering the materials on record erroneously reduced the medical expenses from

Rs.9,36,736.42p to Rs.4,36,186/- and the learned tribunal did not grant "just compensation" in this case.

12. Considering the materials including the evidence on record, it appears that the Hon'ble Court in FMAT No.1165 of 2008 vide an order dated 14.08.2009 held as follows :-

> *"………After hearing the learned counsel for the parties, and after going through the aforesaid materials on record, we find that in this proceeding, the owner of the vehicle not having contested the proceeding and the learned Tribunal below having also permitted the Insurance Company to cross-examine the witnesses for the claimant-respondent, when after the close of evidence, the Insurance Company filed specific application under Section 170 of the Act, it was the duty of the learned Tribunal below to allow such application so that it could get the opportunity of leading evidence of its own for the purpose of controverting the evidence adduced on behalf of the claimant-respondent. By not disposing of such application, the learned Tribunal below has deprived the Insurance Company of leading evidence of its own.*
>
> *We, therefore, set aside the award impugned only on the ground that the Insurance Company did not get opportunity to contest the proceeding by producing evidence of its own.*
>
> *The award impugned is, thus, set aside and the matter is remanded back to the learned Tribunal below for the purpose of giving opportunity to lead evidence by the Insurance Company to controvert the evidence adduced on behalf of the claimant-respondent. Such evidence must be given within a month from the date of communication of this order to the learned tribunal below.* ***If the Insurance Company does not give any evidence of its own, the learned tribunal below will re-affirm the award already passed.*** *If any evidence is given by the Insurance Company, it is needless to mention that the claimant-respondent will be entitled to cross-examine those witnesses and if necessary will also be entitled to recall the*

> *witnesses on behalf of the claimants and in that case, after re-examination, the learned Tribunal below will also give opportunity to the Insurance Company to further cross examine those witnesses…………."*

13. The prayer of the Insurance Company was allowed by the High Court with costs.

14. Admittedly, the victim in the present case sustained serious head injury in the road traffic accident on 15.09.2001, caused by the offending vehicle in this case, which was insured on the date of accident with the respondent Insurance Company **(Exhibit-2).**

15. From the medical papers, it appears that:-

(i) The victim died **1 year 3 months** after suffering the grievous head injury, suffered in the road traffic accident in the present case.

(ii) **Exhibit 6(2)** shows that the victim was first taken to Kasturi Medical Research Centre. It is clearly noted in the medical prescription dated 15.09.2001 that he was a passenger of Bus No. 83 at 8:30pm which met with accident, causing **serious head injury to the victim,** who was taken first Kasturi Medical Research Centre. At that time the victim was unconscious and also had external injuries. He was **referred to SSKM Hospital** on **urgent basis.**

(iii) The victim was then taken to SSKM Hospital and admitted. "Stay in" certificate issued by the SSKM Hospital marked exhibit-6A shows that the victim was **admitted at SSKM Hospital and at that time he was unconscious with a head injury.** He was taken to SSKM Hospital at 10 pm and was "discharged on risk bond" at 10.45 p.m.

(iv) On the next date that is 16.09.2001, he was admitted at The Calcutta Medical Research Institute with head injury. He was operated on 09.10.2001 and discharged on 11.01.2001, though in a vegetative state.

16. From the case summary of the hospital in its Discharge Certificate, it appears that the victim at the time of discharge was in a **vegetative state.** He could only follow simple commands. Several other medical observations have been made by the doctor in the said discharge certificate. **At the time of discharge his feeding was to continue through Tube.**

17. **It thus appears that the victim on being treated for the "head injury" remained in a vegetative state till his death, after 1 year 3 months, caused due to the head injury resulting out of accident in the case. Exhibit 6(c)** is a certificate issued by the doctor under whose treatment the victim remained for the period of more than one year and he was again admitted for the after effect of the said head injury caused in the accident, when his condition further deteriorated.

18. **The certificate issued is as follows :-**

> *".....This is to certify that Mr. Dilip Kumar Chakraborty was injured in a bus accident and was admitted in CMRI Hospital on 15.09.2001 with head injury and treated there till 11.11.2001. He was discharged on 11.11.2001 from CMRI Hospital almost in **non-ambulatory vegetative state** and shifted to his own residence 3C, Seal Thakurbari Road, Calcutta-700 038. I used to visit him regularly at his residence for last 1 year. Today, he has become very serious and he needs immediate ITU*

management, so I am referring him to any Hospital or Nursing Home with ITU facilities for further management.

Sd/-
Dr. Jishnu Banerjee
M.B.B.S. (Cal), MD (Medicine)
Consultant Physician
Reg No. 47085"

19. Considering the materials and evidence on record, the following is evident:-

a) Admittedly, the victim was a pensioner at the time of accident and **his pension was a sum of Rs.6,950/- per month** and as such his income be taken as Rs. 6950/- per month.

b) His age at the time of accident was **67 years,** thus **multiplier of 5** is applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

c) Considering the age of victim, the question of **future prospect does not arise.** ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

d) **Considering that the initial Claimant (the victim) expired and was then substituted by** his widow/wife and son, the number of claimants thus being **2**, **1/3rd** of the victim's income is to be deducted towards his personal expenses. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

e) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000 to be added**. ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

f) On considering the materials on record and the medical/treatment papers of the victim, which continued for about one year and three months, this court finds that an **amount of Rs.9,36,736.42** has been actually incurred as medical expenses.

20. Thus the **"*Just Compensation*"** in this case would be as follows :-

Monthly Income	*Rs. 6,950/-*
Annual Income (6,950 x 12)	*Rs. 83,400/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 27,800/-*
	Rs. 55,600/-
Add : Future prospects (Nil)	-
	Rs. 55,600/-
***Multiplier x 5** (**55,600** x 5)*	***Rs. 2, 78, 000/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Medical Expenses	***Rs. 9,36,736.42/-***
Total amount:-	***Rs. 12,98,736.42/-***
Total amount Round Off:-	***Rs. 12,98,736/-***

21. Admittedly, the Claimants have received the amount of compensation of **Rs. 50,000/-** together with interest in terms of order of the learned Tribunal. The Claimants are now entitled to the **balance amount of compensation of Rs. 12,48,736/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

22. Taking into consideration, the amount already received by the **Claimants/Appellants**, the Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar

General, High Court, Calcutta, **within a period of six weeks,** who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the appellant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

23. The appeal being FMA 790 of 2012 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

25. Interim order, if any, stands vacated.

26. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received, at once.

27. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)