IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 925 of 2012

National Insurance Company Ltd.

Vs.

Smt. Biva Gharami & Ors.

For the Appellant	:	Mr. M. P. Chakraborty, Ms. Ratnadipa Karmakar.
For the Respondents/ Claimants	:	Mr. J. K. Mondal.
Hearing concluded on	:	24.09.2024
Judgment on	:	24.09.2024

Shampa Dutt (Paul) , J.

1. The present appeal has been preferred by the Insurance Company/Appellant against the Judgment and Award dated 6th May, 2010 passed by learned Additional District Judge, 12th Court, Alipore, Motor Accident Claims Tribunal, Alipore, in Motor Accident Claim Case No.31 of 2006, **under Section 166 of the M.V Act.**

2. **The facts :-**

> *"..........On 16.05.2005 at about 11-15 a.m. the victim was returning to his residence from Sri Krishna Oil Agency at Dighipara in the offending vehicle bearing No.WB-19-8526 which was being driven at a high speed and overturned near Falta Road BDO Office and consequently the victim suffered severe injuries and succumbed to death at the spot within few minutes of the occurrence of the accident.*
>
> *With respect to the accident suffered by the victim, Falta P.S Case No.58, dated 16.05.2005 u/s 279/338/304A of I.P.C was started against the Driver of the offending vehicle viz. Anup Das.*
>
> *The claimant impleaded the owner of the offending vehicle as O.P No.1 and the insure National Insurance Co. Ltd. as O.P. No.2..............."*

3. The O.P No.1/Owner did not contest the case and the O.P No.2/Insurance Company has contested the case by filing written statement inter alia, denying all the material points of the claim petition. It has been asserted therein that the Driver had no valid licence and that at the material time the vehicle was being used for the purpose beyond the purview of the insurance policy issued. It is further asserted that the claim is excessive and barred by limitation.

4. The Claimants examined **two witnesses** and proved relevant documents which were marked as **Exhibit-1 to 12.**

5. On conclusion of hearing the learned Tribunal held as follows:-

"……….. <u>MACC No. 31/2006</u>

<u>Dated:-06.05.2010</u>

…….The claimants did not produce any document to justify the income of the deceased apart from oral evidence. However, the documents on record show that the deceased had a monthly income which can be constructed to be Rs.3,000/- per month. Therefore, the total annual income of the deceased is Rs.3,000/- x 12=Rs.36,000/-. This amount is multiplied by multiplier 11 i.e. Rs.36,000/- x 11 = Rs.3,96,000/-. 1/3rd of Rs.3,96,000/- = is Rs.1,32,000/- which is to be substracted as this amount would have been spent by the deceased for his own maintenance. Now Rs.3,96,000/- - Rs.1,32,000/- = Rs.2,64,000/- is the amount of dependency. Apart from this amount, the claimants are also entitled to Rs.9500/- towards funeral expenses, loss of estate and loss of consortium. Therefore, the total compensation comes to Rs.2,73,500/-………………

Sd/-
Judge, MAC, Tribunal,
12th Court, Alipore….."

6. Being aggrieved, the present appeal has been preferred by the Insurance Company on the ground:-

That the learned Tribunal should have held that the victim was a 'gratuitous passenger' in the offending vehicle.

7. Considering the materials including the evidence on record, the following is evident:-

i) It appears from the judgment under appeal that the learned tribunal held in respect of the case of the

Insurance Company that the victim was a **'gratuitous passenger'** as follows :-

> *"..............In the instant case the opposite party no.2 issued the certificate of Insurance of Goods Carrying (three wheeler padal cycles)-public carriers(exbt.4) and from the form of certificate of registration (exbt.5) it appears that the vehicle has been an Auto School Van which falls within the meaning of Fiat/Ambassador/Maruti Car, Tata Goods Vehicles, Ashok Leyland goods vehicles, Trailer motor cycle with/without gear, motor cycle with side gear etc. from Clause 9 of the instructions incorporated in the certificate of Registration it appears that the offending vehicle can be used for the carriage of goods or for carriage of passengers for hire or reward provided there is a permit under the provision of section 66 of the M. V. act. Therefore, it can be said that the offending vehicle could carry goods as well as passengers, thereby binding O.P. No.2 with liability to pay compensation to the victim as a passenger.*
>
> *The limit of liability as stated in the insurance policy (exhbt. 4) states that "limit of the amount of the Company's liability u/s 111(i) in respect of any one accident as per Motor Vehicle Act, 1988 "wherefrom it appears that the Insurance Company is liable to compensate 'anyone accident" which was wide connotation and the liability is not restricted in its scope to the type of vehicle carriage of goods or passenger and is inclusive of the third party property etc. The Insurance policy further enumerates that the person driving the vehicle should hold effective driving licence.* ***The driver of the offending vehicle had been issued a driving licence by the competent authority to drive light motor vehicles like auto rickshaws, motor car, jeep, taxi, three wheeler delivery vans etc. Therefore, it can be correctly said that the driver of the offending vehicle had the licence to drive it..........."***

ii) **Thus in the present case, the tribunal's finding that the victim was not a 'gratuitous passenger' being in accordance with law requires no interference.**

iii) Though there is no cross appeal by the claimants for **enhancement of compensation** in the present appeal filed by the Insurance Company, this Court considering the prevailing laws and relying upon the judgment in ***Janabai WD/O Dinkarrao Ghorpade & Ors. Vs. M/S. I.C.I.C.I. Lambord Insurance Company Ltd., Civil Appeal No.______of 2022 (Arising out of SLP (Civil) No. 21077 of 2019),*** holds that the claimants in this case is entitled under the law to enhanced compensation.

iv) The accident in this case occurred on **16.05.2005** as such the learned tribunal rightly held that income of the deceased be taken as **Rs.3,000/- per month,** in absence of any proof in support of the actual monthly income of the deceased.

v) Rash and negligent driving of the offending vehicle has been duly proved to substantiate the case under Section 166 of the Motor Vehicle Act (FIR and Charge sheet). The offending vehicle had a valid policy **(Exhibit-4).**

vi) From the death certificate **(Exhibit-8)** and the post mortem report **(Exhibit-9),** it appears that the deceased was aged about **55 years** at the time of his death. As such **multiplier 11**, is applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

vii) **Future prospects** – it appears that the deceased was self employed and, as such considering his age as 55 years, **10% of the income** shall be added towards future prospects. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

viii) The number of claimant in the present case being **3, 1/3rd** of the deceased's income is to be deducted towards his personal expenses. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***

ix) 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%)

8. Thus, the **'just compensation'** in this case would be:-

Monthly Income	*Rs. 3,000/-*
Annual Income (3,000 x 12)	*Rs. 36,000/-*
*Less : Less : **1/3rd** towards personal and living expenses*	*Rs. 12,000/-*
	Rs. 24,000/-
*Add : Future prospects @ **10%** of the annual income of the deceased*	***Rs. 2,400/-***
	Rs. 26,400/-
Multiplier x 11 *(26,400 x 11)*	***Rs. 2,90,400/-***
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/-***
Total amount:-	***Rs. 3,74,400/-***

9. Admittedly, the **Appellant/Insurance Company** has deposited the amount of compensation of **Rs. 2,73,500/-** in terms of the order of the learned Tribunal. The claimants are now entitled to the **total amount of compensation of Rs. 3,74,400/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.**

10. Taking into consideration, the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the balance amount of **Rs. 1,00,900/-** along with interest on the total compensation amount, 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 claimant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

11. The appeal being FMA 925 of 2012 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

13. Interim order, if any, stands vacated.

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

15. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)