

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 592 of 2004

Smt. Gouri Dey

Versus

United India Insurance Co. Ltd. and Ors.

For the Appellant/Claimant : Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

For the Respondents/Ins. Co. : Mr. Parimal Pahari, Adv.

Heard on : 18.12.2023

Judgment on : 10.01.2024

Ajay Kumar Gupta, J:

1. This instant appeal has been filed by the appellant/claimant being aggrieved by and dissatisfied with the judgment and award dated 19.05.2003 passed by the Learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan in Motor Accident Claim Case No. 44 of 2002 (158 of 2002) thereby the learned Tribunal allowed the claim application in part on contest against the O.P./United India Insurance Co. and ex parte against the rest but without any cost. It is further ordered that the O.P./United India Ins. Co. shall pay compensation amount of Rs. 1,55,600/- to the appellant/claimant by way of issuing an A/C payee cheque in her name within sixty days failing which the appellant/claimant shall be at liberty to realise the same together with an interest @ 15% p.a. in due course of law.

2. Brief facts are relevant for the purpose of disposal of the instant case as follows:

On 30.01.1997 at about 8.15 am when the deceased was travelling in the mini bus bearing No. WB-37/1157 from Benachiti to Durgapur and when the said bus stopped at the City Centre for enabling the passengers to alight from the bus, at that time another express bus bearing no. WMH/2092 which was proceeding from the opposite side at a very high speed, suddenly dashed against the mini bus as a result the victim died at

the spot. Rash and negligent driving on the part of the driver of the offending vehicle bearing no. WMH/2092 was the sole cause for the accident. The victim died at the age of 28, he was unmarried and he used to earn Rs. 2500/- per month by working in the M/s Geeta Construction. So, the appellant/claimant being the mother of the victim prayed for an award of Rs. 6,00,000/- as compensation.

3. The opposite party/United India Ins. Co. contested the application for compensation by filing a written objection denying all the material allegations against it stating inter alia that the appellant/claimant has no cause of action to file this case. The claim of the appellant/claimant is barred by the law of limitation, waiver and acquiescence. Appellant's case is not maintainable in law. Death of the deceased was not caused by motor traffic accident. The offending vehicle bearing no. WMH/2092 was not at all involved in any motor traffic accident on the relevant date nor the same was insured with the OP/United India Insurance Co. during the period when the accident took place. The accident in question did not take place due to the fault on the part of the driver of the offending vehicle. So, the O.P./United India Ins. Co. is not liable to indemnify any amount of compensation to the appellant and is liable to be dismissed. However, the Learned Tribunal after scanning and appreciation of evidence, both oral and documentary brought on record by the parties, finally came to the

conclusion that the accident took place on the date, time and manner as claimed by the claimant. Decease also died on the spot due to such an accident. Not only that the Learned Tribunal further held that the rash and negligent driving of the driver of the offending vehicle was solely responsible for the said accident. Xerox copies of the FIR, Charge Sheet, P.M. report, registration certificate issued by the Board of Secondary Education, West Bengal and Insurance policy marked as exhibits 1 to 6 respectively and further oral evidence proved the case of the claimant in definite and positive without any contradiction or rebuttal.

4. Learned advocate appearing on behalf of the appellant/claimant submitted that there is no dispute regarding date, time and manner of accident and death of the victim on the spot. There is no dispute regarding assessment of the income of Rs.2,400/- per month of the victim by the Learned Tribunal. However, the Learned Tribunal did not consider the compensation amount towards the future prospect, actual general damages and actual Multiplier of the victim otherwise compensation amount would have been enhanced. It is also submitted on his usual fairness deduction would be 1/2nd of the total income as the victim was bachelor at the time of accident but the Learned Tribunal wrongly deducted 1/3rd towards personal expenses. He prays for enhancement of compensation in view of the facts as submitted by him.

5. Per contra, learned Advocate appearing on behalf of the respondents/Ins. Co. submitted that the Learned Tribunal rightly assessed the income of the victim as Rs. 2,400/= per month on the date of accident. Learned counsel for the respondents/insurance company, however, concedes the Ld. Tribunal wrongly deducted 1/3rd personal expenses of the victim though the actual deduction should be 1/2nd of the total income of the victim. Rest assessment of the compensation is reasonable and correct. So, there is no need of interference by this Appellate Court save and except deduction towards personal expenses.

6. Having heard the rival submissions of both sides and on perusal of the record including award, this Court finds the Learned Tribunal assessed the compensation to the tune of Rs. 1,55,600/= in total after assessing income of the victim as Rs. 2400/= per month, multiplier taken as 8 after considering the age of the mother of the victim and deducted 1/3rd of the personal expenses of the victim and further added compensation towards loss of funeral expenses as Rs. 2000/= though the victim was bachelor. There is no dispute regarding assessment of the income of the victim. The issue here is no compensation awarded towards the head of Future Prospect, general damages and assessment of multiplier. Now, it is settled by the Hon'ble Supreme Court in **National**

Insurance Company Limited vs. Pranay Sethi & Ors¹ that claimant is also entitled to get future prospect, general damages under the head loss of estate, funeral expenses and consortium and interest etc, when the accident occurred due to rash and negligent driving of the Driver of the offending vehicle, involvement of offending vehicle and death of the victim cause due to such motor traffic accident is well established and proved. In the present case, there is no dispute about the victim's death and rash and negligent driving of the driver of the offending vehicle. It is also proved by the claimant by adducing evidence, both oral and documentary without any suspicion. This Court does not find any error in appreciation of evidence adduced by the claimant.

This Court finds the Learned Tribunal wrongly assessed the multiplier as 8 on the basis of age of the parent. When the claim application filed under Section 166 of the M.V. Act, 1988, age of the victim is required to be considered while assessing actual multiplier. It is claimed by the claimant that the victim was 28 years old at the time of accident. Claimant also filed registration certificate of West Bengal Board of Secondary Education (marked as Exbt. 5). It indicates the victim's date of birth as 05.06.1969 and the accident took place on 30.01.1997. After calculation the age of the victim, actual age would be more than 26 years

¹ (2017) 16 SCC 680

but less than 27 years. It falls in the age group of 26 to 30 and for that actual multiplier would be 17.

7. Keeping in mind of the above observations, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 2,400/-
Annual Income (Rs. 2,400 X 12)	Rs. 28,800/-
Add: 40% Future Prospect	Rs. 11,520/-
Total Income after Add 40% Future Prospect	Rs. 40,320/-
1/2 nd Deduction of Personal Expenses of bachelor	Rs. 20,160/-
Total Income after 1/2 nd Deduction	Rs. 20,160/-
Multiplier 17 (Rs. 20,160 X 17)	Rs. 3,42,720/-
Add General Damages for loss of estate and funeral expenses	Rs. 30,000/-

Total Income after Add General Damages	Rs. 3,72,720/-
Less Principle awarded amount received	Rs. 1,55,600/-
Total Compensation after Deduction	Rs. 2,17,120/-

8. Thus, the appellant/claimant is further entitled to get enhanced compensation amount to the tune of Rs. 2,17,120/= (Rs. Two Lakhs Seventeen Thousand One Hundred Twenty only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 09.04.2002 till final payment.

9. It is informed that the appellant/claimant has already received the compensation amount of Rs. 1,55,600/- without interest in terms of the order of the learned Tribunal as such interest would be further calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. on and from 09.04.2002 till final payment, if not paid earlier.

10. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2,17,120/= (Rs. Two Lakhs Seventeen Thousand One Hundred Twenty only) and the interest as

indicated above to the enhanced compensation and amount received by the claimant earlier by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

11. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the enhanced awarded compensation amount as indicated above, shall release the amount in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid. Registrar General shall fix the deposited amount in short term fixed deposit, automatically renewal scheme till actual payment in any nationalised bank.

12. The impugned judgment and award of the learned Tribunal dated 19.05.2003 is modified to the extent only as aforesaid.

13. With the above observations, the instant appeal being **FMA 592 of 2004** stands allowed without order as to costs. Consequently, connected applications, if any, are disposed of.

14. Let a copy of this Judgment along with Lower Court Records be sent back to the learned Tribunal forthwith for information.

15. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

16. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)