11.09.2024
Piya
ct no. 30
sl no. 7

FMA 1148 of 2007
With
CAN 2 of 2023

Suga Bibi
Vs.
New India Assurance Co. Ltd & Anr.

For the appellant : Mr. Krishanu Banik.

For the Respondent No.1/ Insurance company : Mr. Animesh Das.

For the Respondent No.2/ Owner : None.

In re : CAN 2 of 2023

1. **CAN 2 of 2023** has been preferred praying for recording the death of appellant no. 2 (Sk. Yabani) who died on 19.03.2015. Copy of death certificate is filed.
2. Accordingly, let the name of the appellant no. 2 be deleted.
3. The department to do the needful at once.
4. **CAN 2 of 2023 stands disposed of.**
5. The present claim appeal has been preferred by claimant/appellant against the Judgment and Award dated 15th day of September, 2005 passed by the learned Judge, Motor Accident Claims Tribunal,

Fast Track Court No. 1, Purulia (hereinafter called as the learned Tribunal Judge) in M.A.C. Case No. 7 of 2005, **under Section 166 of the Motor Vehicles Act.**

6. <u>FACTS :-</u>

> *"……….On 07.12.2004 in the morning deceased Manir alias Moniruddin was proceeding to Joynagar Bazar from village Hutmura on his cycle along Hura Purulia road. At about 7.00 A.M. when he reached Talab Goria, one 407 Mini Truck bearing No. WB-25A/7287 coming from Bankura side (Hura side) in rash and negligent manner suddenly dashed against the deceased from behind in consequence of which he (deceased) was grievously injured. The injured was taken to Hutmura Primary Health Centre wherefrom he was immediately shifted to Purulia Sadar Hospital but he **succumbed to his injuries** within a few hours of the accident. It is further alleged that a sum of Rs.5000/- was spent for the treatment of the injured who was only 18 years old at the time of his death. He used to work as mason earning Rs.80/- per day that is Rs.2400/- per month. Deceased was a bachelor and his parents (petitioners) are his only legal heirs with these allegations petitioners have prayed for compensation………………"*

7. The opposite party no. 1/owner of the offending vehicle Rabindra Nath Saha and the opposite party no. 2, the New India Assurance Company Limited contested the case by filing two separate written objections. In this written objection the opposite party no. 1 categorically denied all the material allegations made in the application under consideration contending inter alia that the application is not maintainable and the claimant has no cause of action. It was averred by this opposite party that deceased himself was responsible for his death and the driver of the Mini Truck bearing No. WB-25A/7287 was not responsible in any way for the alleged accident. The further contention of this opposite party was that the vehicle being insured with the opposite party no. 2, the owner is not liable to pay any compensation if any to the petitioners.

8. The opposite party no. 2/Insurance Company averred in its written objection that the application for compensation is not maintainable and no such accident occurred on Hura Purulia road at village Hutmura on 07.12.2004 at the time mentioned. Denying all other material allegations it was the further contention of this opposite party that deceased himself was responsible for his death and vehicle No. WB-25A/7287 was not liable. It has also been averred that the claim for compensation of the petitioners is not justified and this opposite party is not liable to pay the same.

9. The claimants examined relevant witnesses and proved relevant documents in support of their case.

The opposite parties examined none but cross-examined the claimant's witnesses.

10. Considering the materials on record, the learned Tribunal held as follows :-

"…… <u>MACC No. 7 of 2005</u>
<u>Dated 15th September, 2005</u>

…….the amount of the compensation to be awarded has to be calculated on the basis of notional income of Rs.15,000/- per year. Rs.5,000/- being deducted therefrom for the personal expenses of deceased had he been alive, the amount comes to Rs.10,000/-. It is in his evidence that deceased was a bachelor survived by his parents. Petitioner no. 1 is the mother of deceased and petitioner no. 2 is the father. Obviously the age of the mother has to be considered in the present case. As per the voter's identity card of the petitioner no. 1 Sk. Suga Bibi, wife of Sk Yabani, the age of the petitioner no. 1, mother of deceased is 37 years as on 01.01.2005. The appropriate multiplier for the age group above 35 years but not exceeding 40 years is '16'. Rs.10,000/- x 16 amounts to Rs.1,60,000/- plus Rs.2000/- as funeral expense of deceased = ***Rs.1,62,000/-.*** *It has transpired in evidence that petitioners have already received Rs.50,000/- from the Insurance Company under Section 140 of the Motor Vehicles Act. So the amount payable by the Insurance Company is Rs.1,12,000/-.*

The above mentioned issues are thus disposed of accordingly.

Consequently the case succeeds and petitioner no. 1 Suga Bibi mother of deceased is entitled to have Rs.1,62,000/- minus Rs.50,000/- = Rs.1,12,000/- from the opposite party no. 2 the New India Assurance Company Limited as compensation for the death of her son due to vehicular accident by the offending vehicle……

Sd/-
Judge, MAC Tribunal
Fast Track Court No. 1
Purulia………"

11. Considering the materials on record, it appears that the victim in this case was injured in the incident and subsequently died as a result of such injuries.

12. From the materials on record including the evidence and the judgment under appeal, the following is evident :-

i) The offending vehicle in this case is a Mini Truck and had a valid insurance (Exbt -5) with the New India Assurance Company Ltd., the opposite party no.2. The said vehicle was being driven in a rash and negligent manner and the said fact has been corroborated by the eye witness.

ii) The postmortem report (Exbt-4) proves that the victim died as a result of the accident in this case. A connected case being Purulia (M) P.S. Case No. 143 of 2004 dated 07.12.2004 under Section 279/304 of IPC was registered against the driver of the said vehicle. Charge-sheet was filed under Section 279/304/427 IPC.

iii) Thus, rash and negligent driving has been prima facie proved. The age of the victim as seen from the certificate relating to the postmortem P.M. report is **18 years**,

multiplier 18 is applicable.***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iv) The accident in this case occurred in the year **2004** and there being no proper proof of income, the income of the deceased is taken as **Rs.3,000/-** per month.

v) **Future Prospect** shall be **40%** of income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

vi) **Deduction** will be **50%** of income as the deceased died a bachelor.

vii) 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**. ***(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%).

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

Monthly Income	*Rs. 3,000/-*
Annual Income (3,000 x 12)	*Rs. 36,000/-*
Deduction 50% *of income of the deceased*	*Rs. 18,000/-*
	Rs. 18,000/-

*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 7,200/-***
	Rs. 25,200/-
***Multiplier x 18** (25,200 x 18)*	***Rs. 4,53,600/-***
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.5,37,600/-***

14. Admittedly, the Claimant has received the amount of compensation of Rs. 1,62,000/- together with interest in terms of order of the learned Tribunal. Accordingly, the Claimant is now entitled to the **balance amount of compensation of Rs. 3,75,600/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

15. Taking into consideration, the amount already received by the **Claimant/Appellant,** the Respondent No.1/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 claimant, upon satisfaction of her identity and payment of *ad-valorem* Court fees, if not already paid.

16. The appeal being FMA 1148 of 2007 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

18. There will be no order as to costs.

19. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)