IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 1401 of 2015

(FMAT 603 of 2014)

With

CAN 1 of 2014 (Old No. CAN 6764 of 2014)

CAN 2 of 2022

Jarina Bibi & Ors.

Vs.

The National Insurance Company Limited & Anr.

For the Appellants/ Claimants	:	Mr. Amit Ranjan Roy.
For the Respondent No.1/ Insurance Company	:	Mr. Afroze Alam.
For the Respondent No.2/ Owner	:	None.
Hearing concluded on	:	20.08.2024
Judgment on	:	13.09.2024

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

1. The present appeal has been preferred by the Claimants against the Judgment and Award dated 26th February, 2014 passed by Judge, Motor Accident Claims Tribunal, 3rd Court Nadia, Krishnanagar in M.A.C. Case No. 50 of 2007, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **<u>THE FACTS</u> :-**

> *"…………On 25.12.06 the victim and others were proceeding as the patient party in the offending vehicle bearing No. WB-51/6099 and at the place of occurrence the driver lost his control and dashed one road side tree and due to the said accident the victim died on the spot…………"*

3. The O.P./Owner has not contested this case, for which the case has been heard ex-parte against him.

4. The O.P./Insurance Company has contested this case by filing a written statement denying therein all the material allegations in the claim petition.

5. This O.P./Insurance Company submits that the case is not maintainable in its present form and law and the victim did not expire due to the accident caused by the offending vehicle and the victim was travelling in the offending vehicle illegally and the allegations of the claimants are false. Hence, this O.P. has prayed for dismissal of the case.

6. The Claimants examined **two witnesses** and proved relevant documents which were marked **exhibits**.

7. The Opposite Parties also adduced evidence and proved relevant documents.

8. **Finally, the tribunal held as follows :-**

" ....<u>M.A.C. Case No. 50 of 2007</u>

<u>Dated: 26th February, 2014</u>

..........The Exbt. B, the proposal form, mentions that policy was made for two person, i.e. driver and the cleaner of the offending vehicle and five passengers and premium was paid for the said policy. But the F.I.R. mentions that at the time of the incident 6 passengers were proceeding in the said offending vehicle and the PW-2, who has claimed to be the eye witness of the incident and who has claimed to have been proceeding along with the victim and others in the above offending vehicle at the time of the incident, has stated in his cross examination that at the time of the incident six persons were in the said offending vehicle. The OPW-1 has stated in court that the above offending vehicle was insured for carrying five passengers and one driver and one cleaner. So it is proved that the O.P./owner has violated the terms of the policy by carrying six passengers in the above offending vehicle at the time of the incident and accordingly the O.P. insurance Company is not liable to pay the compensation money to the claimants for death of the victim and the O.P./owner will pay the compensation amount to the claimants for death of the victim.

The certified copy of the postmortem report (Exbt.3) shows death of the victim and the age of the victim as 40 years. As per the claim petition the victim was 38 years old at the time of the incident.

So, on the basis of the postmortem report I hold that the victim was 38/40 years old at time of the incident and accordingly multiplier of 16 is to be applied in this case.

Regarding the income of the victim at the time of the incident, the PW-3 Bibekananda Poddar has proved the Income Tax paper as Exbt. 4 and he has stated that the total income of the victim at the time of the incident was Rs. 1,03,195/-. The PW-4 Shambhu Mandi has stated in court that at the time of the incident the victim drew commission of Rs. 1,03,194/- as L.I.C. Agent. Hence, I hold that the annual income of the victim was Rs. 1 Lakh *as L.I.C. Agent at the time of the incident and by deducting 1/3rd of the said income towards the personal expenses, the said amount comes to Rs. 66,667/- per year and by applying the multiplier of 16, the compensation amount comes to Rs. 10,66,672/-. In addition the claimants are entitled to get Rs. 2,000/- as funeral expenses, Rs. 2,500/- as loss of estate and the claimant No.1, being the wife of the victim, is entitled to get Rs. 5,000/- as loss of consortium. In all, the claimants are entitled to get Rs. 10,76,172/-, as compensation from the O.P./owner. But the claimants have paid court fee for Rs. 8 Lakhs. Hence, I hold that they are entitled to get Rs. 8 Lakhs as compensation from the O.P. /owner…………*

Sd/-
Judge, M.A.C. Tribunal,
3rd Court, Krishnanagar, Nadia………"

9. Being aggrieved the Claimants preferred the present appeal on the grounds :-

i) That the Learned Tribunal did not grant "Just Compensation" to the Claimants by not applying the appropriate provision of law towards proper calculation of compensation.

ii) The Learned Tribunal did not appreciate the evidence on record properly.

10. From the materials including the evidence on record, it is evident that :-

I) The Learned Tribunal wrongly held that the claimant is not entitled to any compensation as there has been violation of the policy rules in respect of number of passenger's permitted to travel in it.

II) The capacity of the vehicle as seen from the Insurance policy is 5+1 (Six) persons including the driver. From the FIR it appears that there were 6 passengers and one driver. **Admittedly,**

there has been no other claim till date. The tribunal did not consider the fact that this was the first claim in respect of the said accident and as such within the permitted capacity of passengers.

III) The income of the victim from the Income Tax return proved by **P.W. 3 and 4** and **exhibit 4** has been applied by the tribunal as Rs. 1,00,000/-. But it should be Rs. 1,03,195 minus Rs. 10,526.00 (Income tax), which comes to **Rs. 92,669/- per annum** (Commission) as a LIC agent (Self employed).

IV) The age of the victim is taken as **40 years** (**PM report, Exhibit 3**), so **multiplier 15** shall be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

V) **Future prospect** to be applied is **25%** of income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

VI) Deduction would be **1/5th**, the number of claimants being **7**. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

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%).

11. **Thus the 'Just Compensation' in this case would be :-**

Annual Income	*Rs. 92,669/-*
*Less : **1/5th** towards personal and living expenses*	*Rs. 18,533.8/-*
	Rs. 74,135.2/-
*Add : Future prospects @ **25%** of the annual income of the deceased*	***Rs. 18,533.8/-***
	Rs. 92,669/-
Multiplier x 15 *(92,669 x 15)*	***Rs. 13, 90, 035/-***
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. 14, 74, 035/-***

12. **The notice upon the Insurance Company has been served this year (2024).**

13. **The appeal has been preferred in 2015 from a judgment of the year 2014.**

14. **Accordingly, the balance compensation shall be paid with interest as granted from date of filing till the year 2014.**

15. Admittedly, the Claimants have not received the amount of compensation in terms of order of the learned Tribunal. Accordingly, the Claimants are now entitled to the **total amount of compensation of Rs. 14, 74, 035/- together with interest at the rate of 6% per**

annum from the date of filing of the claim application till the year 2014.

16. The **Respondent No.1/ Insurance Company**, shall deposit the total 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 Claimant/Wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

17. From the **office report dated 05.04.2024** it appears that the Appellants did not put in requisites for service since filing of the appeal in the year 2015 in spite of directions by the office.

18. The appeal being FMA 1401 of 2015/FMAT 603 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

20. There will be no order as to costs.

21. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)