IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3192 of 2015

(FMAT 790 of 2014)

Shipra Chowdhury & Ors.

Vs

The National Insurance Company Limited & Ors.

For the Appellants	:	Mr. Amit Ranjan Roy.
For the Respondent no. 1/ Insurance Company	:	Mr. Deb Narayan Roy.
Hearing concluded on	:	19.06.2024
Judgment on	:	25.06.2024

Shampa Dutt (Paul), J.:

1. The present Appeal has been preferred against the Judgment and Award passed on 29th January, 2014 by the Motor Accident Claims Tribunal and Additional District and Sessions Judge, 4th Court, Asansol, Paschim Bardhaman, in M.A.C. Case No. 40 of 2012/03 of 2012 **under Section 166 of the Motor Vehicles Act, 1988.**

2. The facts:-

> *One Ashim Choudhury, aged about 55 years, on 12.05.2011 at about 5.00 p.m. was returning to his residence from Chanda More by riding his motor-cycle bearing No. WB-38S/7774 through N.H2 and when he reached in between Chanda More and Bogra near Kali Mandir under P.S Jamuria at that time one Ambassador car bearing No. WGJ-3686 coming from Asansol side dashed the motor-cycle of the victim rashly and negligently and as a result, the victim fell down on the ground and sustained severe injuries on his person and died on the spot.*
>
> *It is further case of the petitioners that the victim was an employee of ECL, at Satgram area under P.S. Jamuria, designated as Tele-com Supervisor and his monthly income was Rs. 37,000/ approximately.*
>
> *The said Ambassador car bearing No. WGJ-3686 was solely responsible for the accidental death of the victim and at that relevant time the said Ambassador car was under the coverage of Insurance of the National Insurance Company Ltd.(O.P2)*
>
> *Claimants viz Shripra Choudhury is the wife of the victim deceased and Krishnendu Choudhury and Soma Choudhury are the unmarried son and daughter of the deceased.*

3. The O.P. No. 2, National Insurance Company Ltd. contested the claim case of the petitioners by filing W.S. stating inter-alia that the claim application is not maintainable in its present form. The instant claim application is barred by limitation and also the principles of *estoppal* waiver and acquiescence. The claim case is bad for *mis-joinder* and *non-joinder* of necessary party. The O.P 2 has denied the age and monthly income of the deceased. O.P 2 and has also denied that due to rash and negligent driving of the driver of the Ambassador car the accident took place. He denied that the police started the present case over the alleged accident. The O.P 2 has further stated that there was contributory negligence on the part of the victim/deceased. According to the O.P 2, the Insurance Company is not liable to pay any compensation to the claimants/petitioners.

4. O.P 1, the owner of the offending vehicle did not contest the claim case of the petitioners.

5. The claimants/Appellants examined three witnesses. The opposite party/insurance has examined one witness.

6. Documents proved have been marked **Exhibit 1 to 7** being the FIR, Written Complaint, Charge Sheet, Seizure List, PM report, Insurance policy, Voters Card, Employment I.D, Driving License and Pay Slips etc. The Insurance Company too has proved the salary statement of the deceased for the months June 2010 to May 2011. **(Exhibit 7)**

7. Considering the materials on record including the evidence, the Learned Tribunal granted compensation on the findings as follows:-

> *"The gross salary of the deceased from the month of June 2010 to May 2011, (Ext. A) I find the amount of total gross salary was Rs. (48,871 +35,070 +35,183 +34,218 +35,428 +34,218 +35,352 +36,698 +36,584*

+57,076 +37,276 +2,877) = Rs.4,28,851/- and after deducting income-tax, surcharge etc @ 30% net annual income would to the tune of Rs. (4,28,851-1,28,655)=Rs.300196/-. And 1/3 thereof should be deducted towards personal expenses, which comes to the tune of Rs. (300196-1,00065)= Rs. 200131/-. As the victim deceased was aged about 56 years, the multiplier should be 4, being unexpired period of service left in the credit of the deceased. As reported in (2012) 3 TAC 4ll (Cal), as per decision of HOnble Calcutta High Court, multiplying by 4 which comes to the tune (200131 X 4)= Rs. 8,00524/- Besides that, the petitioners are also entitled for funeral expenses of Rs. 2000/-, loss of Estate Rs. 2500/- and the petitioner No.1, being the wife of the deceased is entitled for Rs. 5000/-as loss of consortium. Total amount of compensation comes to the tune of (Rs. 8,00524 +2000 +2500 +5000)= Rs. 8,10,024/-.

Besides that, the claimants petitioners are entitled for interest at the rate of Rs. 6% per annum from the date of application (03.01.2012) till the date of realization."

8. Being aggrieved, this appeal has been preferred by the claimants on the following ground:

That the Learned Tribunal was wrong in applying the wrong multiplier and also while considering other factors while deciding "Just Compensation"

9. In appeal, from the materials on record including the evidence both oral and documentary, the following is evident:-

i) The involvement of the offending vehicle in the accident in this case has not been denied by the owner (O.P. No. 1), who has contested this case. (***The new India assurance Co. Ltd. Vs. Mita Samanta & Ors.,*** **FMA 524 of 2008/(2010) 1 WBLR (Cal) 137, decided on 15th September 2009 (Calcutta High**

Court) and also the Charge Sheet **(Exhibit 1/1)**, Seizure List **(Exhibit 1/2).**

ii) The Vehicle had valid Insurance **(Exhibit 3).**

iii) Considering the Salary Slips **(Exhibit 7 Series)** the victim's income as a permanent employee is Rs. 4, 28, 851/- per annum and after deductions of Rs. 1, 28, 655/- (income tax and surcharge) i.e. Rs. 4, 28,851- Rs. 1, 28, 655 = Rs. 3,00, 196/-

iv) Deduction for personal expenses is to be **1/4th** considering that the number of claimants in the claim application was four. (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121- Decided on 15th April 2009 (Supreme Court) (Page 134-Para 30)***

v) Age of the victim being **56 years**, **Multiplier of 9** is applicable. (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 12 (Supra))***

vi) Considering the age of the victim (56 years) and his status as a permanent employee, **future prospects** is to be awarded to the extent of 15% of his actual salary. (***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** **decided on 31st October, 2017.)**

vii) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses (***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%)

10. Thus, the "Just Compensation" in this case would be:-

Annual Income	*Rs. 4, 28,851/-*
Annual Income after deduction of Income Tax & Surcharge etc. (Rs. 4, 28,851- Rs.1, 28, 655/-)	*Rs. 3, 00, 196/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 75,049/-*
	Rs. 2, 25, 147/-
*Add : Future prospects @ **15%** of the annual income of the deceased*	***Rs. 33,772/-***
	Rs. 2, 58, 919/-
Multiplier x 9 (2, 58, 919 x 9)	***Rs. 23, 30, 271.4/-***
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. 24, 14, 271.4/-***
Round Off Total Amount:-	***Rs. 24, 14, 272/-***

11. Admittedly, the Claimants have received the amount of compensation of Rs. 8, 10, 024/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 16,04,248/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

12. Taking into consideration the amount already received by the Claimant/Appellant, the Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, 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.

13. The appeal being FMA 3192 of 2015/FMAT 790 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

14. No order as to costs.

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

16. Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)