IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 1844 of 2014
(FMAT 1100 of 2013)

United Insurance Company Limited

Versus

Chapa Roy (Sarkar) & Ors.

For the Appellant/ Insurance Company	:	Mr. Rajesh Singh.
For the Respondents/ Claimants	:	Mr. Saidur Rahaman.
Hearing concluded on	:	24.06.2024
Judgment on	:	03.07.2024

Shampa Dutt (Paul) , J.

1. The present claim appeal by the claimants has been preferred against award dated 19th day of June, 2013 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Malda, in M.A.C. Case No.112 of 2012, **under Section 166 of the Motor Vehicles Act.**

2. **The Facts :-**

On 26.04.2012 at about 16.30 hours, one newly married Sudamba Sarkar along with his cousin brother while returning to their house after purchasing sweet for his Boubhat, at that time one Ambassador car bearing registration No.WB-02C/4193 which was proceeding towards Raniganj from Alampur in excessive speed and negligent manner dashed them at Goda Simul More under P.S. Gazole. Due to such accident both of them received serious bleeding injuries and with the help of local people initially they were shifted to Hatimari hospital but as their condition was deteriorating so they were referred to Sadar Hospital, Malda. Both of them succumbed to their injuries at the Hospital. Thereafter post mortem examination was done over the dead body of deceased Sudamba Sarkar. The uncle of the deceased lodged a complaint at Gazole P.S. Accordingly Gazole P.S started case No.168/12 dated 3.5.2012 under Section 279/338/304(A) of the I.P.C against the driver of the Ambassador car. Thus, the widow of the deceased Chapa Roy(Sarkar) and Anita Sarkar, the mother of the deceased, both of village Majlishbag, P.S. Gazole filed the present claim application.

The Claimants stated that at the time of death deceased was aged about 25 years and he worked as a Tower 'Mistri' under one Ashadul Islam and he used to earn Rs.6,000/- per month.

3. The opposite party/Insurance Company appeared and filed written statement to contest the claim of the claimants whereas the opposite party/owner entered appearance by filing Vakalatnama but thereafter due to not taking steps in this case, the case proceeded ex-parte against him.

4. The claimants examined two witnesses and relevant documents, proved were marked **Exhibit 1 to 6**.

5. **Considering the evidence and materials on record, the Tribunal held as follows:-**

*"**M.A.C Case No. 112/2012***

Dated: 19th June, 2013

………. It is stated that at the time of accident deceased was aged about 25 years and he used to earn Rs.6,000/- per month. Admittedly as regard earnings of the deceased no document was filed but it is stated that he was a Tower Mistri. It is not denied by the opposite party/Insurance Company that deceased was a Tower Mistri and worked under contractor Ashadul Islam. In the present day Rs.200/- per day as the wages of a skilled labour can be considered as reasonable and if I hold that deceased used to get his job around 25 days in a month then his earnings would stand at Rs.5,000/- per month. Thus, the yearly earnings of the deceased would stand as Rs.60,000/-. One third of the income should be deducted as personal expenses of the deceased had he been alive. Thus, the yearly earnings of the deceased would stand at Rs.40,000/- (Rs.60,000-20,000). It is claimed that deceased was 25 years at the time of his death so I think in this case suitable multiplied can be taken as 17. Thus, in total yearly earnings of the deceased would come at Rs.40,000/- x 17 =680000/-. In addition claimants are entitled to get Rs.2,000/- as a funeral expenses, Rs.2,500/- as loss of estate and Rs.5,000/- as loss of consortium as claimant no.1 is the widow of the deceased. In addition I think Rs.20,000/- can be granted to the claimant no.2 for loss of love and affection. Therefore, the total compensation amount

would stand at Rs.7,09,500/-. It is the opposite party/Insurance Company who has to satisfy the claim.

Sd/-
Judge, M.A.C. Tribunal
Fast Track 3rd Court, Malda"

6. Being aggrieved, the appellant Insurance Company has preferred the present appeal on the grounds that:-

i) That there has been a delay of eight days in filing the FIR.

ii) That the income of the deceased was not proved.

iii) That the involvement of the offending Vehicle has not been proved.

iv) ***That as no cross objection has been filed by the claimants, there can be no enhancement of compensation.***

7. From the materials and evidence on record, it appears that:-

a) The delay in this case is reasonable considering that the **victim was aged only 25 years and the claimants are his very young wife and mother. He died on the day of his "boubhat", (wedding reception).**

b) There being no proof of income and the accident occurring in the year 2012, monthly income be fixed at Rs. 4,000/- per month and **multiplier of 18** shall be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121)***

c) Regarding **future prospects**, **40%** of income shall be applicable as the victim is treated as self employed. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680).***

d) Number of claimants initially being 2, **1/3rd** deduction for personal expenses are to be made**. *(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (Supra))***

e) 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%).

f) The involvement of the offending vehicle has not been denied by the owner. ***(The New India Assurance Co. Ltd. Vs. Mita Samanta & Ors., FMA 524 of 2008/(2010) 1 WBLR (Cal) 137)***.

8. **Next is the contention of the appellant that as there is no cross appeal there can be no enhancement.**

9. In ***Janabai WD/O Dinkarrao Ghorpade & Ors. Vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., in Civil Appeal No. ___of 2022 (arising out of SLP (Civil) No. 21077 of 2019), decided on August 10, 2022,*** **the Supreme Court** held:-

> ***"12. The appellants have not filed any appeal seeking enhancement of compensation awarded by the Tribunal before the High Court.*** *The Constitution Bench judgment in **National Insurance Company Limited v. Pranay Sethi & Ors., (2017) 16 SCC 680,** was rendered when the appeal was pending before the High Court but since the appeal filed by the Insurance Company was accepted, there was no occasion for the High Court to examine the question of enhancement of compensation. **We find that the appellants are entitled to enhanced compensation** particularly in respect of future prospects and other damages in terms of the judgment of this Court in **Pranay Sethi.** Therefore, in exercise of powers conferred under Article 142 of the Constitution, we have decided to recompute the amount of compensation to be in tune with the constitution Bench Judgment."*

10. Thus the Claimants/Respondents are entitled to enhanced compensation even without there being a cross appeal. ***(Janabai WD/O Dinkarrao Ghorpade & Ors. Vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd.,(Supra))***

11. Accordingly, the 'just compensation' is this case will be as follows:-

Monthly Income	*Rs. 4,000/-*
Annual Income (4,000 x 12)	*Rs. 48,000/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 16,000/-*
	Rs. 32,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 12,800/-***
	Rs. 44,800/-
Multiplier x 18 *(44, 800 x 18)*	***Rs. 8, 06, 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. 8, 90, 400/-***

12. Admittedly, the Appellant/Insurance Company has deposited the amount of compensation of Rs. 7, 09, 500/- in terms of the order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs. 8, 90, 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.**

13. Taking into consideration, the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the **balance amount of Rs. 1,80,900/- along with the 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.

14. The appeal being FMA 1844 of 2014/FMAT 1100 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

15. No order as to costs.

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

17. Interim order, if any, stands vacated.

18. Copy of this judgment be sent to the learned Tribunal.

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

(Shampa Dutt (Paul), J.)