IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 50 of 2014
(FMAT 1311 of 2013)
with
COT 91 of 2013

National Insurance Co. Ltd

Vs

Soma Banerjee & Ors.

For the Appellant	:	Mr.Parimal Kumar Pahari.
For the Respondents/ Claimants	:	Mr. Krishanu Banik.
Hearing concluded on	:	19.06.2024
Judgment on	:	24.06.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred against the Judgment and Award passed on 25th June 2013 by Motor Accident Claims Tribunal, Durgapur, in M.A.C. Case No. 12 of 2006 & 69 of 2004 **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts in the present case is as follows :-**

> *The fact of the case is that on 9.4.04 at about 19.17hrs when Saibal Banerjee with his daughter was coming from Durgapur railway station towards ABL gate by riding his scooter being No WB-40B/9850, at that time one truck bearing no WB-37A/1484 dashed the said scooter from behind and as a result they fell down from the scooter and sustained grievous injury. When both of them were brought to DSP hospital, Saibal Banerjee died there but the other injured Yajnaseni Banerjee was treated in that hospital. That due to rash and negligent driving of the driver of the offending truck being No WB-37A/1484 the accident took place and the only earning member Saibal Banerjee died. The petitioners being his dependent preferred this claim before the Motor accident Tribunal.*

3. The owner of the offending vehicle did not contest the case but both the Insurance Companies contested the case by filing their written statement. The Claimants then did not proceed against the new India Assurance Company.

4. The insurance co. namely National Insurance Co. Ltd. contested the case by filing written statement, stating inter alia that the present application for compensation is not maintainable and the petitioners have no cause of action to file the present case against the OP and also stated that the application is bad for defect of parties and the driver of the offending vehicle as alleged should be made party in the present case. It has also been stated that the National Insurance Co. is not liable to pay compensation since the driver of the scooter was negligent and responsible for the accident.

5. The Learned Tribunal considering the materials on record granted compensation as follows:-

> *"it appears that being an employee of ALSTOM PROJECT INDIA LTD (a multinational company) Saibal Banerjee used to earn Rs. 32,268/- and that has been proved from the certificate given by HR officer of ALSTOM PROJECT INDIA LTD.(a multinational company). That certificate has been marked as exbt. 10. Ld. Advocate for the insurance co. does not contradict about it. So from the document (exbt 10) it has been proved that at the time of accident Saibal Banerjee used to earn Rs. 32,268/-. Out of that income Saibal Banerjee himself, his wife, daughter and mother were/are being maintained. Due to death of Saibal Banerjee the amount so expend for his personal and living purposes is to be deducted. In Section 163A of The MV Act in the II schedule it has been stated that 1/3rd of the total income of the victim will be deducted as that amount is to be considered as personal and living expense of the deceased. In Sarala Verma Vs. Delhi Transport Corporation Hon'ble Apex Court has decided about the quantum of deduction in respect of personal and living expenses of the deceased. During discussion Hon'ble Apex Court mentioned Trilok Chandras case and after full discussion Hon'ble Apex Court has opined that the deduction towards personal and living expenses of the deceased will be 1/3rd where the number of dependent family member is 2 to 3. In the instant case the number of dependent of the deceased is 3. So 1/3rd of the total income of the deceased will be deducted as personal and living expenses of the deceased. From the documents it has been has been proved that in the month of April 2004 Saibal Banerjee received Rs. 32,268/- as salary. Therefore the annual income of Saibal Banerjee during the assessment year 2004-05 was Rs. 3,78,216/-. Out of that amount Saibal Banerjee used to pay tax to the Govt. of Rs. 70,459/- as it has been proved from exbt 6. Therefore, after deduction of tax Saibal Banerjee used to earn net Rs. 3,78,216-70,459 ie = Rs. 3,07,757/-. That amount of money was enjoyed by Saibal Banerjee during his life time. Out of Rs. 3,07,757/-1/3rd of the*

said amount had been expended for the personal and living expenses of Saibal Banerjee and rest amount had been enjoying by his family Therefore the family of Saibal Banerjee used to enjoy the actual amount of Rs. 3,07,757-1,02,586 i.e Rs. 2,05,171/-

As the victim died below the age of 40 as per 11 schedule of section 163A of the MV AC the Add the petitioners. The petitioner are also entitled Rs 3000 lacs and expenses and Rs. 5,000 as loss of love and affection. In addition to that the petitioner no 1 1 Soma Banerjee extra 10,000/- as loss of consortium. Therefore, considering these aspects the petitioners are Durgasstinto get a sum of Rs. 32,82,736 +2,00,000+ 5000-5000+10,000 Le Rs. 35,02,736/- Not is entitled Dumabwe that as the petitioner did not get any compensation. at the initial stage of proceeding they are entitled to get 6% interest over the sad amount calculating from the date of filing of the case to the date of realization"

6. Being aggrieved, the appeal has been preferred on the following ground:

That the Learned Tribunal did not assess the compensation in a "just manner" in respect of future prospects, income and general damages, which thus requires consideration in accordance with law.

7. The Respondent/ Insurance Company/ appellant herein, has challenged the award on the grounds that:-

i) *The involvement of the offending vehicle in this case is doubtful as it has not been proved before the Learned Tribunal.*

ii) *That the Learned Tribunal has wrongly assessed the amount for future prospects and multiplier.*

iii) *Professional tax was not deducted from the Income.*

8. **From the materials on records, the following facts are taken into consideration to consider "*just compensation*":-**

i) The age of the deceased being **40 years** (PM report marked Exhibit 4), **Multiplier of 15** is applicable (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121- Decided on 15th April 2009 (Supreme Court)***

ii) The deceased at the time of the accident (death) was employed as Manger with ACSTOM PROJECT INDIA LIMITED, DURGAPUR and used to draw a salary of **Rs. 32, 268/- per month**. This has been proved before the tribunal by a certificate issued by the competent authority of the Company (**Exhibit 10**). The quantum of income has neither been denied nor challenged by the Insurance Company.

9. Thus, the annual income of the deceased is fixed at Rs. 3,87,216 - Rs. 70, 459 (Income Tax) = Rs. 3,16, 757/- (Exhibit 6). No professional tax was paid by the deceased. Thus, the monthly income is taken as Rs. 32, 268/- per month and he had a permanent job, being 40 years of age. Thus, following the guidelines provided in (***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*****, decided on 31st October, 2017 (Para 59.3)),** the claimants are entitled to an amount equivalent **to 30%** of the annual income of the deceased towards **future prospects**.

10. The claimants are also entitled to 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%)

11. Considering, the number of dependants, 1/3 of the salary is to be deducted towards personal expenses.

12. From the evidence of P.W. 2 (an eyewitness) it appears that he has deposed truthfully. This witness has identified the offending vehicle and has also deposed that it was being driven in a rash and negligent manner. The owner has not contested the case and thus not denied the involvement of the offending vehicle in the accident. (***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).**

13. On Investigation, the vehicle involved in the accident in this case has also been proved. (**Exhibit 2**)

14. The said offending vehicle had valid Insurance (**Exhibit 3 & 5**)

15. **Accordingly the calculation of compensation is as follows:-**

Monthly Income	*Rs. 32, 268/-*
Annual Income *(32, 268 x 12)*	*Rs. 3, 87, 216/-*
Income Tax Deduction from Annual Income *(Rs. 3, 87, 216- Rs.70, 459)*	*Rs. 3, 16, 757/-*
*Less : **1/3rd** towards personal and living*	*Rs. 1,05, 585.6/-*

expenses	
	Rs. 2, 11, 171.4/-
*Add : Future prospects @ **30%** of the annual income of the deceased*	***Rs. 63,351.4/-***
	Rs. 2, 74, 522.8/-
Multiplier x 15 *(2, 74, 522.8 x 15)*	***Rs. 41, 17, 842/-***
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. 42,01, 842/-***

16. Admittedly, the Appellant/ Insurance Company has deposited the amount of compensation of Rs. 35, 02, 736/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of enhanced compensation of Rs. 42, 01, 842/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total amount.**

17. Taking into consideration, that the amount of Rs. 35, 02, 736/- already has been deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the balance amount, 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.

18. The appeal being FMA 50 of 2014/FMAT 1311 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

19. No order as to costs.

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

21. Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)