15.05.2024
SL No.1 & 2
Court No.25
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 642 of 2023

Shriram General Insurance Co. Ltd.
Versus
Dhanobala Singha & Ors.
With

COT 16 of 2023
Dhanobala Singha & Ors.
Versus
Shriram General Insurance Co. Ltd.

Mr. Rajesh Singh
...for the appellant/insurance Co.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy,
Mr. Arghya Bhattacharya
.... for the claimants.
Mr. Sanjay Paul,
Ms. Jaita Ghosh
....for the respondent No. 5/United India Insurance Co., Ltd.

The instant appeal has been preferred against the judgment and award dated 17th September, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, FTC, 1st Court, Islampur, Uttar Dinajpur, in MAC Case No. 33 of 2017.

The brief facts of the case is that on 28.06.2016 at about 6.00 P.M. the victim of this case, namely, Parimal Singha and one of his friend Anirudha Ghosh was proceeding to their resident at Chounagara, Kuatuli under the jurisdiction of Karandighi PS from Khetrobari along the NH 34 when they reached at Salampur at the time, one truck bearing No. WB-59/5973 which was coming from Raiganj side and proceeded towards Karandighi side and one another trailer truck bearing No. NL-01-G/3781 which was coming from Karandighi side towards Raiganj side and both vehicles running in a very high speed and rash and negligent manner consequently they collided with each other and it was head on collision and after such collision both the vehicles dashed the motorcycle of the victim. As a result, the victim and his friend were thrown out on the road and sustained severe injuries on their person. After such accident, they were admitted to the local people to the Karandighi BPHC. Thereafter, they were referred to the Raiganj District Hospital but the victim died on the same day at night.

The victim was a bachelor; the parents of the victim preferred an application before the learned tribunal under Section 166 of M.V. Act for getting compensation on the ground that the victim died due to rash and negligent driving of drivers of both the offending vehicles.

Both the insurer of the offending vehicles made party in the proceeding and contested the claim case by filling written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 11,92,000/- in favour of the claimants towards the compensation and directed the present appellant i.e. the Shriram General Insurance Co. Ltd. (insurer of the trailer bearing No. NL-01-G/3781) to pay the entire compensation.

Being aggrieved by and dissatisfied with the said award the Shriram General Insurance Co. Ltd. has preferred the instant appeal.

The claimants also preferred one cross appeal against the said award being COT 16 of 2023 for enhancement of the compensation.

Let both the appeals and the Cross Appeal be taken up together for uniformity of the judgment.

Learned advocate, Mr. Singh appearing on behalf of the appellant submits that the impugned award passed by the learned tribunal is erroneous on the point of quantum. He submits that the learned tribunal has considered the fact that the victim was the bachelor and the claimants are the parents instead of which the deduction was made 1/3rd. In this case, the deduction should be 1/2. He further pointed out that the learned tribunal has awarded the future prospects which was added as 50% to his establish income. The deceased was a Civic Volunteer so he was not under permanent employment. Thus, in this case the claimants are entitled to get only 40% to the establish income of the deceased towards the future prospects as per view of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***. He further submits that the learned tribunal has awarded the general damages of Rs. 70,000/- in this case the parental consortium was awarded to be Rs.40,000/-. The Hon'ble Apex Court in ***Pranay Sethi (supra)*** has specified that the consortium is available only to the spouses. So, in this case, the parental consortium is awarded excess.

Mr. Banerjee appearing on behalf of the claimants submits that the learned tribunal has only awarded simple interest @ 4% per annum from the date of filing of the claim application the interest is in the lower side. So, the interest should be added at least @ 6% per month.

Learned advocate appearing on behalf of the United India Insurance Company Limited Mr. Paul submits that both the vehicles were though involved in the alleged accident but the charge-sheet was submitted against the present appellant Insurance Company. So, the learned tribunal has correctly awarded the compensation and directed the present appellant Insurance Company to pay the compensation.

Heard the learned advocate perused the materials on records also perused the observation of the learned tribunal. It appears that the claim case stated the facts that both the vehicles were running dangerously and recklessly at the time of accident and it has also been stated that both the vehicles dashed the motorcycle of the victim. Eye witness was also disclosed the fact that the drivers of both the vehicles are responsible for the accident. FIR was lodged stating that the drivers of both the vehicles were responsible for the accident. However, charge-sheet was submitted against the present appellant.

Considering the entire facts and circumstances of this case, it appears to me that learned tribunal should have considered the pleadings and evidences of the claim case. The C.S. is a document which is the final report of police investigation. Police case initiated on the basis of accident. C.S. can be used as a supporting prima-facie document, but it cannot override or fade the evidentiary value of eye witness. However, learned tribunal directed the present appellant to pay the entire compensation which is principally correct as per view of Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd. (2015 ACS 1441).** However, present appellant may have the liberty to proceed against the United India Insurance Company to apportion of the compensation in a separate proceeding.

However, in considering the submission of Mr. Singh it appears to me that the learned tribunal has erroneously deducted 1/3rd of the income towards the personal living expenses. The deceased was bachelor so in this case the deduction towards the personal living expenses would be 1/2.

The deceased was a Civic volunteer so the job of Civic volunteer is not permanent in nature. Accordingly, the claimants are entitled to get the future prospects which would be @ 40% to the establish income of the deceased. Learned tribunal has awarded prenatal consortium Rs. 40,000/-. It appears that by virtue of decision of Hon'ble Apex Court in ***Pranay Sethi (supra)*** consortium is available to the spouse. Thus, in my view, the learned tribunal has awarded excess Rs.40,000/- towards the parental consortium. In this case, the general damage would be funeral expenses and loss of estate i.e. Rs. 30,000/-

Mr. Benerjee submits that the six years has already elapsed after the pronouncement of the judgment of ***Pranay Seth (supra).*** So @ 20% the general damages may be added in this case.

Considering the submission the @ 20% of Rs. 30,000/- i.e. Rs. 6,000/- is added to the general damages. Thus, the general damages in this case would be Rs. 36,000/-. It appears that the learned tribunal has awarded @ 4% simple interest per annum on and upon the compensation. This Court has passed several judgments on the basis of the fact that each and every compensation shall carry interest @ 6% per annum; the same view may be adopted. The award of this case shall carry interest @ 6% per annum from the date of filling of the claim case.

After considering the entire aspects the award passed by the learned tribunal is herby modified.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

<u>Calculation of compensation</u>

1. Monthly Income	:Rs. 5,500/-
2. Annual Income (Rs.5,500/- 12)	:Rs.66,000/-
3. Add: Future Prospects @ 40%	:<u>Rs.26,400/-</u> :Rs.92,400/-
4. Less: Deduction 1/2	<u>:Rs.46,200/-</u> :Rs.46,200/-
5. Multiplier 17 (age 27 years) (Rs.46,200/- X 17)	:Rs.7,85,400/-
6. Add: General Damages (Rs.30,000/- + Rs.6,000/-)	<u>:Rs.36,000/-</u>
Compensation	**Rs.8,21,400/-**

After calculation the award comes to Rs. 8,21,400/-. The present appellant i.e. Shriram General Insurance Co. Ltd. is directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim application.

It appears that the appellant Insurance Company has already deposited a sum of Rs. 25,000/- towards the statutory deposit at the time of filing of the claim application and, thereafter, they have deposited a sum of Rs.14,51,823/- on 22.08.2022. Thus, the Insurance Company had deposited total amount of Rs.14,76,823/-. The same amount must have accrued some interest. The office of the learned Registrar General, High Court Calcutta is directed to calculate the award passed by this Court and disburse the same in favour of the claimants equally. After such disbursement there may have some residue in the account of the Insurance Company that may be refunded to the Insurance Company on usual prayer along with the accrued interest.

The payment of compensation is subject to ascertainment of payment of deficit Court Fees.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

The applications being **FMA 642 of 2023** along with **COT 16 of 2023** are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)