IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 1339 of 2013

(FMAT 225 of 2013)

Smt. Sudipta Dutta & Ors.

Versus

The Branch Manager,

The Oriental Insurance Company Ltd. & Anr.

For the Appellants : Mr. Krishanu Banik.

For the Respondent No. 1/ Insurance Company : Mr. Parimal Kumar Pahari.

Hearing concluded on : 20.06.2024

Judgment on : 01.07.2024

Shampa Dutt (Paul) , J.

1. The present claim appeal has been preferred against the Judgment and Award passed on 28th August, 2012 by the learned Additional District Judge, 2nd Court, Bankura as the Judge, Motor Accident Claims Tribunal, Bankura in M.A.C. Case No. 27 of 2011 & 23 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

2. The facts:-

> *"The facts of the case is that on 05.02.2011 at about 8.30 AM while the deceased Prosenjit Dutta was going towards Bankadaha riding on his motorcycle bearing registration No.WB-68A/2636 through Bishnupur- Bankadaha pitch road for his business purpose, one mini truck bearing registration No.WB-33/6370, which was proceeding towards the opposite direction at a very high speed, in a rash and negligent manner, dashed the said motorcycle and as a result the victim Prosenjit Dutta sustained serious bleeding injuries on his person and he was admitted to Sub-Divisional Hospital, Bishnupur and from there he was referred to Mission Hospital, Durgapur on the next day i.e., 06.02.2011 at 5-30 AM for better management where about Rs.1,45,000/- was expended for his medical treatment but ultimately he died there on the same date. The claimants' further case is that the deceased was a businessman by occupation earning Rs.7,000/- per month and he was aged about 30 years at the time of the said accident. The deceased left behind his wife, minor son and old parents who were completely dependent on the income of the deceased and due to sudden and untimely road traffic accidental death of the victim Prosenjit Dutta they suffered loss of income of the deceased as well as mental pain and agony.*
>
> *The **O.P. no.2**, the registered owner of the offending vehicle, appeared and **contested the case** by filing a written statement in which he mentioned that his vehicle had been duly insured with the **O.P. No.1, Oriental Insurance Co. Ltd.,** and the driver of the*

said vehicle had valid and effective driving licence on the date of the alleged accident and as such the registered owner of the vehicle, which was involved in the accident, is not liable to pay compensation for the alleged accident, and that the O.P No.1, the Oriental Insurance Co. Ltd., the insurer of the offending vehicle, who has the third party risk, is liable to pay compensation to the victim-party.

*The **O.P. no.1**, the Oriental Insurance Co. Ltd., the insurer of the offending vehicle, also **contested the case** by filing a separate written statement and petition under Section 149 & 170 of the M.V. Act and contended, inter alia, that the driver of the offending vehicle bearing No.WB-33/6370 was not responsible for the alleged accident and as such the question of giving compensation by this insurance company for the alleged accident does not arise."*

3. The claimants examined three witnesses. Relevant documents being FIR, written complainant, three seizure lists, charge sheet, Insurance Policy, PM report and medical papers were produced, proved and marked exhibits.

4. The opposite parties did not adduce any evidence.

5. Considering the materials on record, the learned tribunal granted compensation on the findings as follows:-

"M.A.C. Case No. *27 of 2011*
M.A.C. Case No. *23 of 2011*

Dated: 28th August, 2012

So, the amount of compensation has to be assessed in the following manner. One third of the annual income of the deceased is to be deducted towards the personal expenses of the deceased had he been alive and then the amount comes to Rs.30,000/- minus Rs.10,000/-=Rs.20,000/- which is to be multiplied with the multiplier 16 and as such the loss of income comes to Rs.20,000/- x 16=Rs.3,20,000/- to which Rs.15,000/- is to be added for the expenses of medical treatment of the deceased. Rs.5,000/- is to be added towards the funeral expense of the deceased and for the loss of consortium, loss of estate and sufferings of mental pain and agony of the petitioners *due to sudden untimely road traffic accidental death of the victim another Rs.5,000/- total Rs.25,000/- is to be added and so the total amount of compensation is calculated as Rs.3,20,000/- + Rs.25,000/-=Rs.3,45,000/- which should be disbursed amongst all the three petitioners in equal share by the O.P No.1, the Oriental Insurance Co. Ltd., the insurer of the offending mini truck, by issuing separate cheques in the name of the petitioners. The share amount of the minor petitioner no.2 shall be handed over to his mother, the petitioner no.1, as his natural guardian, who shall keep the share amount of the minor petitioner either in post office or in a nationalized bank in a fixed deposit scheme in the name of the minor till he attains his majority.*

Sd/-
Additional District Judge, 2nd Court, Bankura
As the Judge, Motor Accident Claims Tribunal"

6. Being aggrieved, this appeal has been preferred by the claimants on the grounds:-

i) That the learned Tribunal failed to grant "just compensation" as the tribunal failed to assess the income of the victim correctly.

ii) The wrong multiplier was applied.

iii) Medical expenses were wrongly assessed.

iv) Other reliefs as entitled under the Act were not granted.

7. In appeal, on considering the materials on record, including the evidence, it is evident that:-

a) The victim being self employed, **Rs.4,000/-** per month be fixed as his income.

b) The victim was aged about **30 years** at the time of the accident, so **multiplier of 17** will be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

c) **Future prospects** of **40%** on income is to be granted. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680)***

d) Number of claimants being **3, 1/3rd** is to be deducted towards personal expenses. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121)***

e) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of 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) Medical expenses (actually spent) as per documents is **Rs. 1,13,000/- (P.W. 3 and Exhibit 2 series).** ***(Sidram Vs. The Divisional Manager, United India Insurance Co. Ltd. and Anr., on 16.11.2022, (2022) 8 S.C.R. 403)***

8. Thus, the *"Just Compensation"* in this case would 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 17 *(44, 800 x 17)*	***Rs. 7, 61,600/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses:	***Rs. 84,000/-***

Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	
Medical Expense	***Rs. 1,13,000/-***
Total amount:-	***Rs.9,58, 600/-***

9. Admittedly, the Claimants/ Appellants have received the amount of compensation of Rs. 3, 45, 000/- 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. 6, 13, 600/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

10. Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance 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 Appellant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

11. The appeal being FMA 1339 of 2013/FMAT 225 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

12. No order as to costs.

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

14. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)