

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 822 of 2012

United India Insurance Co. Ltd.

Versus

Firoja Bibi & Ors.

For the Appellant/Ins. Co. : Mr. Sanjay Paul, Adv.
Ms. Jaita Ghosh, Adv.

For the Respondents/Claimants : Mr. Uday Sankar Chattopadhyay, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Aishwarya Datta, Adv.
Ms. Ashadeep Karmakar, Adv.

Heard on : 18.12.2023

Judgment on : 17.01.2024

Ajay Kumar Gupta, J:

1. Appellant/Insurance company assailed the judgment and award dated 20th January, 2012 passed by Learned Judge, Motor Accident Claims Tribunal, Kalna in M.A.C. Case No. 23 of 2010, thereby the Ld. Tribunal allowed the claim application ex parte without cost against the OP/owner and on contest without cost against the OP/ United India Ins. Co. Ltd and further directed the claimants are entitled to get compensation to the tune of Rs. 6,33,500/- along with 6% interest per annum from the OP/the United India Ins. Company Ltd. OP/Insurance Company is directed to pay the said amount to the claimants along with interest thereon from the date of filing of the petition till realisation of the amount within a period of two months from the date by account payee cheques failing which the claimants shall be at liberty to execute the order as per law in an application filed under Section 166 of the Motor Vehicles Act, 1988 for granting compensation on account of death of the victim in a motor traffic accident.

2. Sans otiose details, the fact of the instant case is that on 30.06.2010 at about 6.15 am when the victim was returning home

from his daughter's school, the offending truck bearing no. WGH 3502 dashed against him from the front at Khalispur more as a result of which he sustained severe injuries and expired on the spot. The driver of the offending vehicle was solely responsible for his death as the same was being driven in a rash and negligent manner. The claimants have claimed compensation to the tune of Rs. 7,50,000/- The OP/owner did not contest the case in spite of being given sufficient opportunity for which the case has been heard ex parte against him. The OP/United India Insurance Company has contested the case by filing written statement wherein it is stated that the claim of the claimants is unjust, improper, excessive, false and concocted. The claimants have failed to file relevant documents in support of their claim and also to fulfil the statutory requirements to claim compensation under the provision of M.V. Act. The OP has denied the entire allegation and contention of the claimants and has prayed for dismissal of the case.

3. Learned counsel appearing on behalf of the appellant/United India Insurance Company Ltd. submitted that the learned Tribunal has assessed excessive compensation amount without considering that the claimants failed to prove the actual income of the victim

prior to his accident. Claimants claimed that the victim was a business man and he used to sell Potato and also engaged in cultivation. He used to earn Rs. 7,000/- per month prior to the date of accident but claimants failed to produce any document to show that he was a business of Potato and also engaged in cultivation. Despite of the said facts, the Ld. Tribunal has accepted and assessed victim's income as Rs. 6,000/- per month as minimum from his business at the relevant time without any sufficient and reasonable evidence. It is true that the claimants have filed one income certificate issued by a Panchayat member of Sultanpur Gram Panchayat. Member of the Panchayat issued a certificate to the effect that the victim used to earn Rs. 7,000/- per month prior to the accident. He also adduced evidence as P.W. 3 and proved the certificate. But a member of a panchayat cannot issue certificate of an income of the victim stating therein that the deceased was a cultivator and business of potato and dry seeds and he used to earn Rs. 7,000/- per month. It is further submitted and raised a question how any member of panchayet can assess the income of other person without looking into valid documents or book of accounts. Therefore, the claimants have failed to prove the actual income of the victim on the date of accident. If the claimants unable to prove deceased actual

income, then there is a provision for calculation of his income as notional income. The accident took place in the year 2010, so his income at best Rs. 3,000/- per month. It can be assessed in view of the judgment reported in **Laxmi Devi and Others v. Md. Tabbar and Anr**¹. But the Ld. Tribunal has assessed his income as Rs. 6000/- per month though it ought to be Rs. 3000/- as notional income. If it would have considered such income, the awarded compensation would be definitely reduced. As such, the insurance company has filed this instant appeal praying for reduction of compensation amount.

4. On the other hand, learned counsel appearing on behalf of the respondents/claimants strenuously submitted that there is no dispute regarding the date, time and manner of accident as well as the rash and negligent driving of the driver of the offending vehicle. The claimants had proved the rash and negligent driving of the driver of the offending vehicle by oral and documentary evidence and the Ld. Tribunal has rightly come to conclusion that the offending vehicle was involved in the said accident and the driver of the offending vehicle was solely responsible for the accident as a result the victim

¹ **2008 (2) T.A.C. 394 (SC)**

died. The only issue raised by the insurance company here regarding the income of the victim. So far as to the income of the deceased, the claimants have established his business and income by adducing oral and documentary evidence. P.Ws. 1, 2 and 3 adduced evidence and clearly deposed that the deceased, Syed Abdul Sazed was a cultivator and a business of Potato and dry seeds. He used to earn Rs. 7,000/- per month from his business and cultivation. P.W. 1 further stated in her evidence that she had a personal knowledge that her husband used to earn Rs. 7,000/- per month from his business. The member of Sultanpur Gram Panchayat examined as P.W.3. He specifically stated that the deceased was a cultivator and business of Potato and dry seeds and he used to earn Rs. 7000/-. He also proved the certificate issued by his employee Ajit Chakraborty. So, there is no any doubt about the business and his earnings. Accordingly, the Ld. Tribunal has assessed his income as Rs. 6,000/-.

5. It is further submitted that though the Ld. Tribunal awarded a sum of Rs. 6,33,500/- as compensation but without assessing the future prospect and actual general damages. If the Ld. Tribunal would have considered the future prospect and actual general damages in view of constitution bench judgment delivered in

National Insurance Company Ltd. Vs. Pranay Sethi & Ors.², the compensation amount would have been more than the awarded compensation amount. He prays for enhancement of compensation. In reply, the Ld. Advocate appearing on behalf of the Ins. Co. submitted that no cross-objection filed by the respondents/claimants. Therefore, they are not entitled to get future prospect or general damages in pursuant to the above referred judgement. The Ld. Tribunal has awarded a sum of Rs. 9,500/- as general damages. So, further calculation of general damages does not arise at all. He prays for modification of the compensation amount after reducing the compensation amount considering the income of the victim as Rs. 3,000/-.

6. Having heard the submissions of both sides and on perusal of the materials available on record as well as judgment passed by the Ld. Tribunal, it reveals that there is only dispute regarding the assessment of the actual income of the deceased and furthermore, whether claimants are also entitled to get future prospects or not is to be decided by this Court. According to the judgment pronounced in **Pranay Sethi's Case (Supra)** by the Constitution Bench. Claimants

² (2017) 16 SCC 680

are also entitled to future prospects in addition of his income. At the same time, they are also entitled to general damages to the tune of Rs. 70,000/- in place of Rs. 9,500/- towards loss of state, funeral expenses and consortium. Claimants should not be deprived from getting reasonable compensation on the plea that they did not file cross-objection. That apart, it is now settled law that the claimants are entitled to get compensation under the head of future prospect and actual general damages in view of aforesaid judgment.

7. So far as the income of the deceased is concerned, from the meticulously perusal of entire evidence, it appears that the claimants unable to prove his actual income and his business by any valid documentary evidence. The claimants tried to prove his income by producing a certificate issued by an employee of Pradhan of Sultanpur Gram Panchayat. He issued a certificate of income without verifying any valid documents or book of accounts. There is no reflection in the certificate that on what basis he has issued an income certificate of the deceased. It is true that other persons are not the appropriate person to assess the income of deceased or any individual without verifying any valid documents or book of accounts. Even the Pradhan cannot issue such certificate. He can at best issue

a certificate of those person, who has no income at all or living below poverty line. But here the Pradhan has issued his income as Rs. 7000/- without verification of any valid documentary evidence. Therefore, the Ld. Tribunal has erred in accepting the certificate issued by the Pradhan and assessed a sum of Rs. 6000/- as his income in the year 2010. Furthermore, during cross-examination, P.W. 1 unable to produce the stock register of his business. She further failed to produce trade licence, tax receipt and/or any book of accounts.

8. The Hon'ble Supreme Court reported in **Laxmi Devi and Others v. Md. Tabbar and Anr.** held that even an unskilled can earn Rs. 100/- per day as notional income in the year 2008 if the claimants unable to prove deceased's income. The accident took place in the year 2010. So, two years already lapse after the aforesaid judgment and during these two years, prices of the commodities have definitely increased. It cannot be denied by any one. Accordingly, income of the deceased can be safely accepted as Rs. 4,000/- in the year 2010 on the basis of guesswork that the economic factors and prices of essential commodities prevalent in the year 2010 and

considering the aforesaid judgment passed in **Laxmi Devi and Others v. Md. Tabbar and Anr.**

9. The age of the victim was 48 years old at the time of accident in view of claim application as well as post mortem report, deceased falls in the age group of 46 to 50 years and for that, multiplier would be 13.

10. It is informed that no compensation amount received by the claimants till date.

11. In the light of above discussion and findings, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 4,000/-
Add 25% of future prospects of the income as the deceased was in between age of 40 to 50 years	Rs. 1,000/-

Total Income	Rs. 5,000/-
Total Annual Income (Rs. 5,000/- X 12)	Rs. 60,000/-
Total Loss of dependency (Multiplier 13) (Rs. 60,000/-X 13)	Rs. 7,80,000/-
Less: deduction 1/3 rd as personal expenses of the deceased	Rs. 2,60,000/-
Compensation after deduction	Rs. 5,20,000/-
Add: General Damages	Rs. 70,000/-
Total compensation	Rs. 5,90,000/-

12. Thus, the respondents/claimants are entitled to get total compensation amount to tune of Rs. 5,90,000/- (Rupees Five Lakhs Ninety Thousand Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. 19.07.2010 till final payment as it was informed that no any compensation amount has been paid by the Insurance Company to the claimants till date. However, it is found that the appellant/Insurance Company has deposited Rs. 6,08,500/- vide OD Challan No. 5778 dated

31.08.2012 and has also deposited the statutory amount of Rs. 25,000/- vide OD Challan No. 4068 dated 04.04.2012 with the Registry of this Court. Both the aforesaid amounts together with accrued interest shall be adjusted against the entire compensation amount together with aforesaid interest.

13. Learned Registrar General, High Court, Calcutta, shall release the compensation amount together with interest as indicated above in favour of the respondents/claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 20th January, 2012 upon full satisfaction of the compensation amount, if any amount left over, the same shall be refunded to the appellant/insurance company.

14. The impugned judgment and award of the learned Tribunal dated 20th January, 2012 is modified to the aforesaid extent only. No order as to costs.

15. With above observations, the instant appeal being **FMA 822 of 2012** stands disposed of.

16. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

17. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

18. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)