IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 769 of 2022

Madhusudan Mondal & Anr.
-Vs-
The United India Insurance Co. Ltd & Ors.

For the Appellants/Claimants : Mr. Amit Ranjan Roy

For the Respondents/ Insurance Company : Mr. Guddu Singh

Heard on : 26.06.2024, 22.07.2024

Judgment on : 5.12.2024

Ananya Bandyopadhyay, J.:-

1. Two claimants had filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, SPL Court at Asansol being MAC Case No.188/2017, claiming an award of Rs.8,00,000/-whereby the victim expired due to a road traffic accident occurring on 12/11/2017 at about 2:30 pm

2. The offending vehicle, a bus bearing Registration No. JH04H/8054 hit the victim approaching rashly and negligently while the victim was travelling on a motorcycle with her husband as a pillion rider.

3. The victim was declared dead on the spot and the post mortem of the dead body was held at Jamtara Sardar Hospital.

4. Subsequently, based on a written complaint, Brindapathar P.S. Case No. 106/17 dated 12/11/2017 under Sections 279/304 (A) of the Indian Penal Code was instituted against the driver of the offending truck as aforesaid.

5. The owner of the offending vehicle appeared before the court in receipt of summons and filed written objections. However, he thereafter discontinued contesting in the case and the case proceeded ex parte against him.
6. The respondent, the United Insurance Co. Ltd. contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.3,87,500/- as compensation with an interest @6% per annum from the date of filing of the application i.e. from 18.12.2017 till its realization that would be paid by the insurance company.
8. The main grievance addressed by the Learned Advocate representing the appellants/claimants was to the extent of Rs.3000/- being assessed as monthly income instead of Rs.4500/-. Moreover, instead of deducting 1/3rd towards personal expenses of the deceased if she had been alive, the deduction of 50 per cent was erroneous.
9. However, the rate of interest was computed to be granted from the date of passing of the award instead of from the date of filing of the claim application.
10. The Learned Advocate representing respondents submitted that the claimants had preferred separate claim application for the death of their father as well as mother, arising out of the same accident. Since, both parents died out of the same accident, the appellants/claimants were entitled only to one time compensation for the death of both the parents and not individually for the death of each of the parents.

11. Moreover, since, the appellants had been the major sons of the victim, they were not entitled any compensation.

12. Considered the rival submissions of the Learned Advocate representing appellants/claimants as well as respondent/insurance company.

13. In ***Kirti and Anr. Vs. Oriental Insurance Company Limited***[1]**,** the Hon'ble Supreme Court observed as follows:-

> ***13.*** *Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law [Sunita Tokas v. New India Insurance Co. Ltd., (2019) 20 SCC 688 : (2020) 4 SCC (Cri) 436] and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in Hem Raj v. Oriental Insurance Co. Ltd. [Hem Raj v. Oriental Insurance Co. Ltd., (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] , as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case: (Hem Raj case [Hem Raj v. Oriental Insurance Co. Ltd., (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] , SCC p. 656, para 7)*
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> *"7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made."*

14. The Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Birender & Ors.***[2], held the following:-

[1] (2021) 2 SCC 166

12. *The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , the Court observed thus: (SCC pp. 647-48, paras 9-12)*

"9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view [Manjuri Bera v. Oriental Insurance Co. Ltd., 2003 SCC OnLine Cal 523 : (2004) 2 CHN 370] that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. … The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the

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[2] (2020) 11 SCC 356

person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique [Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique, 1989 Supp (2) SCC 275] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai [Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234 : 1987 SCC (Cri) 482] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

***13.** In para 15 of Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of*

Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

14. *It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.*

15. The Hon'ble Supreme Court in ***Kirti (Supra)*** had granted compensation for the death of both the parents individually with a accumulative assessment of the compensation granted.
16. In the decision of ***National Insurance Company Limited (Supra),*** the Hon'ble Supreme Court held that the age of the majority of claimants will not preclude them from demanding the compensation owing to the death of each of their parents irrespective of their dependency upon the same.
17. Therefore, the claimants being the major sons of the deceased victim mother were entitled to the compensation claimed.
18. The victim being at the relevant time, considering the fiscal index prevalent at the time of accident and as well as the observation of the ***Kirti (Supra)***,

the monthly income of the victim lady can be assessed to be Rs.4,500/- per month.

19. Considering the observations of the Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr.***[3] and ***Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.***[4]**,** the compensation is modified as follows:-

Monthly Income	Rs. 4,500/-
Annual Income	Rs. 54,000/-
Future Prospect to be added(30%)	Rs. 16,200/-
	Rs. 70,200/-
1.3rd Deduction towards Personal Expenses	Rs. 23,400/-
	Rs. 46,800/-
	X 15
Multiplier to be "15"	Rs. 7,02,000/-
	Rs. 84,000/-
General Damages	Rs. 7,86,000/-
Less Award	Rs. 3,87,500/-
Entitlement	Rs. 3,98,500/-

20. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 3,87,500/-. The appellants/claimants are entitled to a sum of Rs. 3,98,500/- along with 6%

[3] 2017(4)TAC 673(S.C)
[4] (2009) 6 SC 121

interest per annum to be paid from the date of filing of the application i.e. 18.12.2017 till the date of its actual realization.

21. The Learned Advocate for the respondent/insurance company is to deposit the balance sum of Rs. 3,98,500/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order .
22. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disbursed the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Special Court (Electricity Act) – cum- Additional District and Sessions Judge, Asansol, Paschim Bardhama in M.A.C. Case No. 188 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.
23. The instant appeal being FMA 769 of 2022 is allowed.
24. Accordingly, the instant appeal is disposed of. Connected application, if any, also stands disposed of.
25. Interim orders, if any, are vacated.
26. Parties to act upon the server copy of this judgment.
27. The urgent certified copy of this order be provided complying terms and conditions.

(Ananya Bandyopadhyay, J.)