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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 621 of 2024

Lakshmi Kol
-Vs-
The United India Assurance Co. Ltd. & Anr.

For the Appellants/claimants	:	Mr. Amit Ranjan Roy Mr. Pradyut Kumar Roy
For the respondent Nos. 1/insurance co.	:	Mr. Sanjay Paul Ms. Jaita Ghosh
Heard on	:	09.09.2024
Judgment on	:	09.09.2024

Ananya Bandyopadhyay, J. :-

1. The Learned Advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The instant appeal has been filed against the judgment and order dated 1st February, 2024 passed by the learned Additional District Judge, 1st Court, Paschim Medinipur in MAC Case No.275 of 2017 under Section 166 of the Motor Vehicles Act, 1988.
3. The learned advocate for the appellant/claimant submitted that the learned tribunal erred in computing the yearly income of the victim who was a student, aged about 12 years

to be 15,000/-, contrary to the observation of the Hon'ble Supreme Court in Kishan Gopal & Anr. Vs- Lala & Ors[1] to be Rs. 30,000/-. Paragraph No. 18 of the said judgment is quoted below:

> "18. Point Nos. 2 and 3 answered together in favour of the appellants for the following reasons:
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> The Tribunal having answered the contentious issue No.1 against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos. 1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.
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> Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos. 1 and 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163A of the M.V. Act at clause No. 6 which refers to notional income for compensation to those persons who had

[1] (2013) III ACC 878 (SC)

no income prior to accident. The relevant portion of clause No. 6 states as under:

"6. Notional income for compensation to those who had no income prior to accident.

1. Non-earning persons – Rs. 15,000/- p.a". The aforesaid clause of the Second Schedule to Section 163A of the M.V. Act is considered by this Court in the case of Lata Wadhwa & Ors. –v- State of Bibhar & Ors. While examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs. 12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs. 25,000/- was awarded. Thus, a total sum of Rs. 1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs. 1.5 lakhs to which under the conventional heads a sum of Rs. 50,000/- should be added and thus total amount in each case would be Rs. 2 lakhs. Further, in the

> case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the company in the said case having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs. 15,000/- Further, the deceased boy, had he been alive would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applied to the multiplicand".

4. The learned advocate for the respondent Nos. 1/insurance company submitted that the decision of the Hon'ble Supreme Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr* should be applicable to the instant case and the directions with regard to the computation of the compensation should be followed in awarding just compensation.

5. The application under Section 166 of the Motor Vehicles Act, 1988 was filed by the appellant/claimant on account of death of the victim in an accident which occurred on 3rd May, 2017 at 3.00 p.m. being a pillion rider at Bajaj Motor Cycle bearing

registration No. WB-34AZ/4847 which was hit by the offending vehicle being a mini truck bearing registration No. WB-33/5686 proceeding at a high speed in a rash and negligent manner from Jamna towards Baraberia. The accident occurred near Sahara more under P.S. Pingla district Paschim Medinipur. The victim succumbed to his injuries on the spot.

6. The Learned Tribunal disposed of the issues framed and on appreciation of evidence pronounced the impugned judgment and order directed the respondent Nos. 1 to pay a compensation to the tune of Rs. 2,61,000/- along with interest @ 6 % per annum from the date of filing the application till payment to the appellant/claimant, considering the yearly income of the deceased student to be Rs. 15,000/-.

7. The Learned Advocate for the respondent Nos.1/insurance company did not dispute the occurrence of the accident the involvement of the offending vehicle nor the other ancillary issues including the validity of the driving licence, route permit and insurance policy etc. However, opposed the submission of the learned advocate for the appellant/claimant on the ground of deductions concerning the computations of

the compensation award in case Rs.30,000 was to be considered as the yearly income of the victim.

8. Considering the observation of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*[2] The impugned award of Rs. 2,61,000/- is modified as follows:-

Monthly Income	Rs. 2,500/-
	X 12
Annual Income	Rs. 30,000/-
Less: 1/3 for Personal Expenses	- 10,000/-
	20,000/-
Add: Future prospect (40%)	Rs. 8000/-
	Rs.28,000/-
Multiplier to be "15"	X 15
	Rs. 4,20,000/-
Add: General Damages (15,000+15,000 + 10%)	Rs. 33,000/-
	Rs. 4,53,000/-
Less: Principal Award Received	Rs. 2,61,000/-
Entitlement	Rs.1,92,000/-

9. The learned advocate for the appellant/claimant submits to have received the entire compensation amount. The appellant/claimant are entitled to receive the balance amount of Rs. 1,92,000/- at the rate of 6% per cent per annum from

the date of filing of the claim application i.e. 20.06.2017 till the date of actual realization.

10. The respondent No.1/Insurance Company is to deposit the balance amount i.e. 1,92,000/- along with interest at the rate of 6 % per cent per annum before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

11. The office of the Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present appellant/claimant as mentioned in the impugned judgment passed by the learned Additional District Judge, 1st Court, Paschim Medinipur in MAC Case No.275 of 2017on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court fees.

12. The instant appeal is disposed of accordingly.

13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

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1 2017(4)TAC 673(S.C)