IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 2790 of 2015

(FMAT 394 of 2015)

with

CAN 1 of 2024

Smt. Sulekha Samanta & Ors.

Vs

The New India Assurance Company Ltd. & Anr.

For the Appellants	: Mr. Krishanu Banik, Mr. Tathagata Banik.
For the Respondent No.1/ Insurance Company	: Mr. Parimal Kumar Pahari.
For the Respondent No.2/ Owner	: None.
Hearing concluded on	: 21.08.2024
Judgment on	: 17.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Claimants against the Judgment and Award dated 23rd day of December, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Alipore (hereinafter called as the Learned Tribunal Judge) in M.A.C. Case No. 82 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

> *"…………..On 02.10.2011 at about 5.45 hrs the offending vehicle being a mini lorry (Tata 407) bearing registration no. WB-15A/3245 was being driven by its driver along Diamond Harbour Road from south to north at a very high speed and in a most rash and negligent manner disobeying all traffic rules and endangering human life and safety of others and when it reached near Joka opposite to Diamond Park it dashed a motorcycle bearing registration no. WB-22A/9221 from behind and as a result both the motorcyclist namely Partha Sarathi Mondal and the pillion rider Mrinal Kanti Samanta were thrown on the road and sustained injuries on their persons and were removed to ESIC hospital where the driver of the motorcycle was administered first aid. After a few hours the pillion rider expired at the said hospital. Both the driver and the pillion rider were home guards and were coming to office at Thakurpukur to join Puja duties. Rash and negligent driving on the part of the driver of the alleged offending vehicle was the sole cause of the aforesaid accident. The deceased was a healthy man with active habits and was the only bread-earner of his family, therefore, the petitioners have fallen in a most helpless condition and have been suffering from acute financial problems as at present there is no earning member in the family. Due to the pathetic death of the deceased in the said accident his widow has lost consortium of her husband at a young age and his mother has lost her beloved son and the minor children have been deprived of love affection and guidance of their father in their childhood. The petitioners have suffered great financial loss, mental*

> *pain and agony due to the premature death of the deceased in the said accident and they will suffer so for rest of their lives...........”*

3. Opposite party no.1 who is the owner of the offending vehicle did not appear to contest the case, however, O.P. no.2, the New India Assurance Co. Ltd. appeared and contested the case and by filing written statement disputed the claim of the claimants and prayed for dismissal of the case. On their application filed u/s 170 of the M.V. Act, 1988 the O.P. no.2 was also permitted to contest the case on all the grounds that are available to the insured.

4. The Claimants examined **three witnesses** and proved relevant documents which were marked **Exhibit 1 to 15.**

5. The opposite parties did not adduce any evidence.

6. **The Tribunal on the basis of materials on record finally:-**

> ***“........MACC No. 82 of 2011***
>
> ***Dated 23rd December, 2014***
> *..........Therefore, in the light of the discussions as made above the claimants are found entitled to compensation calculated on the basis of yearly income i.e. Rs. 1,04,040/- per annum which after one third deduction towards personal and living expenses comes to Rs. 69,360/- per annum only. The age of the victim as already decided above is taken to be 35 years at the time of his death and therefore multiplier of 16 would be applicable. The calculation comes to Rs. 69,360/- multiplied by 16 = Rs. 11,09,760/-. In addition the claimants are also found to be entitled to Rs. 9,500/- on account of loss of consortium, loss of estate and funeral expenses thereby the amount of compensation would reach to Rs. 11,09,760/- + Rs. 9,500/- = Rs. 11,19,260/-. The claimants are found entitled to interest 6% per annum on the awarded compensation from the date of the filing of the claim*

case i.e. 02.11.2011 in accordance with Section 171 of the M.V. Act, 1988. The wife of the deceased (claimant no.1) is entitled to 40% of the compensation plus loss of consortium i.e. Rs. 4,43,904/- + Rs. 5,000/- = Rs. 4,48,904/- and the mother and two daughters (claimant nos. 2, 3 & 4) for the rest of the compensation amount alongwith funeral expenses and loss of estate which comes to Rs. 6,65,856/- + Rs. 4500/- = Rs. 6,70,356/- in equal proportions……….

Sd/-
Judge MAC Tribunal
3rd Court, Alipore……"

7. Being aggrieved the Claimants preferred the present appeal on the grounds :-

a) That the Learned Tribunal Judge was wrong in not considering the future prospect of the deceased since on the ground that the wife of the victim deceased got an appointment on compassionate ground and she was receiving duty allowance which would have been received by the husband had he been alive and these findings of the Learned Tribunal Judge are contrary to the settled principal of law laid down by the ***Hon'ble Apex Court of India in the case of Vimal Kanwar & Ors. Vs Kishore Das & Ors reported in AIR 2013 SC (Civil) 1783=2013(3) TAC 6(S.C.)*** *and as such the impugned award is bad in law and the same is liable to be enhanced and modified.*

b) *That the learned Tribunal was wrong in not granting 'Just Compensation' in favour of the claimants as per the relevant provision of the Motor Vehicles laws.*

8. From the materials including evidence on record, it appears that:-

i) P.W. 2, an eyewitness has proved the rash and negligent driving of the offending vehicle, which was duly insured at the relevant time **(Exhibit 11).**

ii) The deceased was Home Guard with the Kolkata Police and through Ext. 14, his salary has been taken as **Rs. 8670/- per month (Exhibit 14).**

iii) As per his service I-Card (**Exhibit 3**) the victim's date of Birth is 02.10.1976. He died on his birth day, 02.10.2011. He was aged **35 years** and as such **multiplier 16** will be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iv) **Regarding future prospects the tribunal held as follows :-**

> *"……….In the judgment cited by the claimants* ***(2013 (3) T.A.C. 6 (S.C.) Vimal Kanwar and others. Vs Kishore Dan and others)*** *the principle that has been laid down is that the salary received by the claimant on compassionate appointment cannot be termed to be a (pecuniary advantage) and the same is not liable for deduction while calculating the final amount of compensation. The said principle is binding on this tribunal, however, there is a difference in the present case in as much as the salary being received by the claimant no. 1 is not being deducted for the purpose of calculating the compensation, rather taking into account the same only addition of future prospects is not being done as apparently even if the deceased*

> *had been alive he would have received the same amount which is currently being received by the claimant no.1 and therefore there has not been any loss of income for the claimants as such. However, the claimants are entitled to compensation the detailed calculation of which is given below. The other judgment 2012(3) T.A.C. 77(Cal) Smt. Namita Mishra alias Misra and others v. New India Assurance Co. Ltd. and Anr. as cited by the claimants is also not applicable in this case for the same reasons as discussed above...........”*

v) The said argument by the Insurance Company /O.P. (Claimants No.1 having got the job of her husband) does not hold good, because had the husband been alive, his income would have added to the income of claimants. **Future prospects** are what the claimants get as death benefit.

So **50%** of salary is to be taken. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

vi) Number of claimants being 4, **1/4th** is to be deducted towards personal expenses of the deceased.

vii) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000**. ***(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%).

9. Thus the **“*Just Compensation*”** in this case would be as follows :-

Monthly Income	*Rs. 8670/-*
Annual Income *(8670 x 12)*	*Rs. 1,04,040/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 26,010/-*
	Rs. 78,030/-
*Add : Future prospects @ **50%** of the annual income of the deceased*	***Rs. 39,015/-***
	Rs. 1,17,045/-
Multiplier x 16 *(1,17,045 x 16)*	***Rs. 18,72,720/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 19,56,720/-***

10. Admittedly, the Claimants have received the amount of compensation of **Rs. 11,19,260/-** 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. 8,37,460/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

11. 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 claimant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

12. The Insurance Company has taken a stand that the driver of the offending vehicle did not have a valid driving licence. But it appears that no evidence was adduced by the O.P/Insurance Company to substantiate the said contention.

13. The appeal being FMA 2790 of 2015/FMAT 394 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

15. There will be no order as to costs.

16. Interim order, if any, stands vacated.

17. Copy of this judgment be sent to the Learned Tribunal, along with the trial court records, if received.

18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)