IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 823 of 2023
(FMAT 412 of 2016)

Ruma Biswas & Ors.
Vs
The Oriental Insurance Company Ltd., Chinsurah, Hooghly & Anr.

For the Appellants/ Claimants	:	Mr. Amit Ranjan Roy.
For the Respondent No. 1/ Insurance company	:	Ms. Sucharita Paul.
For the Respondent No. 2/ Owner	:	None.
Hearing concluded on	:	11.07.2024
Judgment on	:	07.08.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by claimants/appellants against the Judgment and Award passed on 8th October, 2015 by the Member, Motor Accident Claims Tribunal, 1st Court, Hooghly, in M.A.C. Case No. 34 of 2010/408 of 2014, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **Facts :-**

> *"The death of Samir Biswas aged about 48 years in a motor vehicle accident took place on 12.01.2009 at about 9.45 a.m. On the relevant date at the material point of time Samir Biswas was proceeding in his motorcycle being No. WB-16A/4921 along the G.T. Road towards Mogra and when he reached near Natunpole, G.T. Road near Adisaptagram, the driver of the truck being No. WB-41C/9328 dashed against him and at that time the driver was driving the truck in a very rash and negligent manner. By the impact of that accident, Samir Biswas fell down from the motorcycle and he sustained serious injuries and died on the spot. After the accident a criminal case was started against the accused driver and the case ended in a charge-sheet being No. 13/09 dated 28.02.2009."*

3. Oriental Insurance Company Ltd. contested the case, wherein all the material allegations with regard to the age and income of the deceased, the mode and manner of accident and also the insurance coverage of the vehicle were denied. It was contended that the claim of the petitioners was excessive, abnormal and without any legal and equitable basis and as such the claim application was liable to be dismissed with cost. The specific case of the defence is that the driver of the offending truck was not holding a valid and effective driving license at the time of accident. The owner of that truck had handed over the possession of that vehicle to the driver without any valid paper of authority and thereby violated the terms and conditions of the insurance policy for which the claimants are not entitled to compensation from the Insurance Company.

4. The claimants examined **7 (seven) witnesses** and proved relevant documents which were marked as Exhibits.

5. The O.P.W. 1/Owner has proved the **licence (valid)** in favour of Sujay Dhara.

6. **The learned Tribunal granted compensation as follows :-**

"M.A.C. Case No. 34 of 2010
(New No. MACC 408/ 2014)

Dated:08.10.2015

Admittedly the deceased was 48 years of age for which multiplier 13 will be applicable. The deceased was a general order supplier and he was carrying on his day to day occupation on the basis of a valid trade license issued by the Hooghly-Chinsurah Municipality and from the IT returns of assessment years 2005—06, 2007-08 and 2008-09 the average income will come to Rs.89,067/-. The deceased was a married man and as such the amount of compensation so arrived at shall be reduced by one-third towards the personal expenses of the deceased. Hence, his annual income will come up to Rs.59,378/-. With this amount 13 multiplier will be considered for which the compensation will come to Rs.7,71,914/-.

Besides this, the claimants will be entitled to the funeral expenses to the extent of Rrs.2,000/-, loss of estate to the extent of Rs.2,500/- and loss of consortium to the extent of Rs.5,000/- totaling to Rs.9,500/-.

Then the total compensation amount will come to Rs.7,81,414/-. In addition to this amount, claimants are entitled to interest @ 8% per annum over the said amount of compensation from the date of filing of this case till actual realization. In my considered view this amount of compensation will be just, proper, adequate and equitable. Hence, the owner of the offending vehicle bearing Registration No. WB-41C/9328 involved in the accident is liable to pay the said amount of compensation to the petitioners. For the reasons aforesaid all the issues are decided in favour of the petitioners.

Sd/-
Member,

Motor Accident Claims Tribunal,
1st Court, Hooghly"

7. Being aggrieved, this appeal has been preferred on the ground :-

That the award passed by the learned Tribunal is not in accordance with law.

8. Considering the materials and evidence on record, it appears:-

i) That the driver of the offending vehicle had a valid licence **(Exhibit 9).** It appears that the licence was issued on 26.12.2004 and was valid (Non Transport) till 31.12.2024 and for (Transport) it was valid till 10.12.2015. The accident happened on 12.01.2009 and the offending vehicle is a truck (lorry). **Thus, the finding on this issue of the tribunal is erroneous.**

ii) **Exhibit 10,** collectively are the Income Tax returns filed by the deceased. The return for the year 2008-09 shows that the **actual income** of the deceased at the time of the accident was Rs.1,15,520/- per annum.

iii) The **age of the deceased was 50 years (P.M. Report)** and the accident took place on 12.01.2009. **Multiplier of 13** will be applicable. **(*Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iv) **Future prospects at 25%** of income is to be added, as deceased was self employed (general order supplier). ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

v) Number of claimants being **3 (three), 1/3rd** of the victim's income is to be deducted towards personal expenses. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***

vi) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the 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%).

vii) The offending vehicle had valid insurance (**Exhibit 5**) to be paid fully by the insurance company (Valid Insurance) **(Exhibit – 5).**

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

Annual Income	*Rs. 1,15,520/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 38,506.6/-*
	Rs. 77,013.4/-
*Add : Future prospects @ **25%** of the annual income of the deceased*	***Rs. 19,253.35/-***
	Rs. 96,266.75/-
***Multiplier x 13** (**96,266.75 x 13**)*	***Rs. 12, 51, 467.75/-***
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. 13,35,467.75/-***

10. Admittedly, the Claimants have not received the amount of compensation in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation**

together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

11. The Respondent No. 1/Insurance Company shall deposit the total 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.

12. The appeal being FMA 823 of 2023/FMAT 412 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

13. No order as to costs.

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

15. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)