IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3179 of 2015

(FMAT 414 of 2015)

Smt. Sumitra Bouri & Ors.

Vs.

The Regional Manager,

Reliance General Insurance Company Ltd. & Anr.

For the Appellants : Mr. Krishanu Banik.

For the Respondent No. 1/ Insurance Company : Mr. Sanjay Paul, Ms. Jaita Ghosh.

For the Respondent No. 2/ Owner : None.

Hearing concluded on : 24.06.2024

Judgment on : 04.07.2024

Shampa Dutt (Paul), J.:

1. The appeal has been preferred against the Judgment and Award dated 29th day of January, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Bankura (hereinafter called as the learned Tribunal Judge) in M.A.C. Case No. 156/02 of 2011/2013, **under Section 166 of the Motor Vehicles Act.**

2. **THE FACTS :-**

> *On 12.10.2011 at about 02.00 p.m. on Joykrishnapur-Bishnupur pitch road near Dwarakeswar River Bridge Abantika under P.S. – Bishnupur, Distrcit-Bankura, while the deceased Ajit Bouri was returning to Dwarika from Joykrishnapur by riding a by-cycle, at that time a truck bearing no. WB-15A/7734 loaded with sand which was proceeding towards the same direction at a very high speed suddenly dashed the victim/deceased from behind and, as a result, the victim sustained serious bleeding injuries on his person. He was immediately taken to S.D. Hospital, Bishnupur for medical treatment but he died at the hospital after sometime.*
>
> *It is the case of the claimant that the accident occurred due to rash and negligent driving of the driver of the truck bearing no. WB-15A/7734 and there was no fault on the part of the victim. It has also been stated by the claimant that the deceased Ajit Bouri was a labourer by occupation and he used to earn Rs.4000/- per month and at the time of his death he had left behind his wife and three minor children i.e. the petitioners.*

3. The O.P. No. 1 (Reliance General Insurance Company Ltd.) has contested this case by filing written statement but the O.P. NO. 2/owner did not contest the case in spite of service of summon to him. In the written statement, the O.P. NO. 1 has stated that the instant MAC Case is not maintainable and he has denied all the allegations made in the claim petition. It has also been stated that the driver of the offending vehicle bearing no. WB-15A/7734 was not holding any valid license at the time of this accident and the driver of the vehicle was under the influence of alcohol and he thereby violated the terms and conditions of the policy. It has also been stated in the written statement that the driver of the offending vehicle was not at fault and the accident was not caused due to the rash and negligent driving of the driver of the offending vehicle. It has also been stated by the O.P. NO. 1 that the claim of the petitioner to the tune of Rs.4,00,000/- is excessive and they have also denied the monthly income of the deceased as Rs.4000/- per month and also the age of the deceased as 45 years.

4. The claimants examined two witnesses. Relevant documents have been produced and marked Exhibit 1 series.

5. No evidence was adduced on behalf of the O.P. NO. 1/Insurance Company.

6. **On completion of evidence and hearing, the learned Tribunal held as follows:-**

*"**M.A.C. Case No. 156 of 2011***
M.A.C. Case No. 02 of 2013

Dated: 29. 01.2015

.... In order to prove the age of the deceased/victim Ajit Bouri, the claimant has produced the postmortem examination report of the deceased. The photocopy of the postmortem report has been exhibited in this case which has been marked as Ext. 1 (Series). This postmortem report goes to show that the time of his death, the deceased Ajit Bouri was aged about 45 years and the claim application also shows that the deceased was aged about 45 years at the time of his death. Therefore, the postmortem report clearly proves that the

deceased was aged 45 years at the time of his death. Since the deceased was aged 45 years at the time of his death, according to the schedule given in the Act the multiplier of 11 is applicable for assessing the compensations amount. If the notional income of Rs.3000/- per month of the deceased is accepted, his annual income comes to Rs.36,000/- (Rs.3000/- x12=Rs.36,000/-). After deduction of the personal expenditure of the deceased i.e. one-third (Rs.12,000/-) of his total annual income, it comes to Rs.24,000/- (Rs.36,000/- minus Rs.12,000/- = Rs.24,000/-). Therefore, after applying the multiplier of 11, the compensation amount comes to Rs.2,64,000/- (Rs.24,000/-x11=Rs.2,64,000/-). Besides that, the claimants/petitioners are also entitled to get Rs.10,000/- towards funeral expenses, Rs.20,000/- for love and affection suffered by the claimants/petitioners due to sudden and untimely death of her husband/father in the motor accident. So, the total compensation amount in favour of the claimants/petitioners comes Rs.3,14,000/- (Rs.2,64,000/- + Rs.10,000/- + Rs.20,000/- + Rs.10,000/- + Rs.10,000/- = Rs.3,14,000/-).

Sd/-
Judge, Motor Accident Claims Tribunal, Bankura"

7. Being aggrieved, the claimants (wife and children of the deceased) have preferred this appeal on the grounds:-

(i) That the learned Tribunal did not grant 'Just Compensation'.

(ii) The notional income was erroneously considered as Rs.3000/- in place of Rs.4000/-.

(iii) The multiplier and deduction applied was wrong.

(iv) Reliefs under other categories/heads has been prayed for.

8. Considering the evidence and the materials on record, the following is evident:-

(a) The accident in this case occurred on 12.10.2011 and there being no proof of income, **the notional income of Rs.4000/- per**

month is taken for the purpose of calculating 'Just Compensation'.

(b) The deceased was aged about **45 years** as seen from the postmortem report and as such **multiplier of 14** is applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121).***

(c) Future prospects to be **25%** of the income, considering his age and the deceased being taken as self employed. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

(d) Deduction for personal expenses to be **1/4th** as number of claimants are four (4). ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (Supra))***

(e) 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%).

9. Thus, the "Just Compensation" in this would be:-

Monthly Income	*Rs. 4,000/-*
Annual Income (4,000 x 12)	*Rs. 48,000/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 12,000/-*
	Rs. 36,000/-

*Add : Future prospects @ **25%** of the annual income of the deceased*	***Rs. 9000/-***
	Rs. 45,000/-
Multiplier x 14 *(45, 000 x 14)*	***Rs. 6, 30, 000/-***
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. 7, 14, 000/-***

10. Admittedly, the Claimants have received the amount of compensation of Rs. 3,14,000/- 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. 4,00,000/- 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 Appellant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

12. The appeal being FMA 3179 of 2015/FMAT 414 of 2015 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.

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

(Shampa Dutt (Paul), J.)