IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 303 of 2023

With

CAN 1 of 2018 (Old No. CAN 10221 of 2018)

Sabita Debi & Ors.
-Vs-
The National Insurance Company Ltd. & Anr.

With

COT 42 of 2023
The National Insurance Company Ltd. & Anr.
-Vs-
Sabita Debi & Ors.

For the Appellants	: Ms. Sima Ghosh
For the Respondents/ Insurance Company	: Mr. Parimal kr. Pahari
Heard on	: 14.06.2024, 27.06.2024
Judgment on	: 06.12.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. Four legal heirs of deceased Mukesh Kumar Mandal filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Suri, Birbhum being MAC Case No.257/2015, claiming an award of Rs. 10 lakhs whereby the aforesaid deceased expired due to a road traffic accident on 4.11.2015 at about 2:30 pm. The offending vehicle bearing Registration No. WB-19G/4874 hit the aforesaid deceased riding on his motorcycle in a rash and negligent manner

while he was standing at Khairakuri Bus Stand. Consequently, the victim sustained grievous injuries was admitted in the Suri Sadar Hospital, Birbhum where he passed away. Subsequently, based on a complaint, Md. Bazar P.S. Case No. 248/2015 dated 5.11.2015 was instituted against the driver of the offending vehicle as aforesaid.

2. The owner of the offending vehicle appeared in this case but did not contest this case subsequently before the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Suri, Birbhum in MAC Case No.257/2015. The case was heard ex parte owner of the vehicle.

3. The respondent, the National Insurance Company contested the aforesaid MAC case.

4. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.10,39,000/- as well as an interest of 9% from the date of filing the case, that is from 27/11/2015 payable by the National Insurance Company.

5. The Learned Advocate representing the Appellants/claimants submitted that the income of the victim was Rs.9000/- per month at the time of the accident as he was an employee of Dipa Stone Products but the Learned Tribunal considered his income to be Rs.6000/- p.m. Moreover, the compensation towards 'Future Prospect' was not granted. Compensation should have been considered as per second schedule. The general damages in case if the beneficiary was the spouse would be Rs.9,500/- instead of Rs.4,500/-. Funeral expenses and cost of litigation should have been Rs.50,000/-instead of Rs.25,000/- and loss of estate should have been Rs.1,00,000/- and Rs.1,00,000/- each for loss of love and affection instead

of Rs.50,000/-. The interest awarded should have been @ 12% per annum over the total claim as prayed for from the date of filing of the claim application to till.

6. The Learned Advocate representing the respondent No1/insurance company in COT 42 of 2023 submitted that the Learned Judge of the Tribunal erred in considering the monthly income of the deceased was Rs.6,000/- in absence of cogent proof of such income of the deceased victim at the time of accident. The Learned Judge of Tribunal erred in awarding Rs.1,00,000/- as consortium to the widow of the deceased victim and Rs.50,000/- for loss of love and affection of the minor son which was not the principle and/or guidelines of the decision of the Apex court laid down by the five Judges constitutional Bench. The Learned Judge of the Tribunal ought to have held that interest in this case should be 6% per annum instead of 9% as per the various decisions of our High Court.

7. Heard the submission of the learned advocates representing the respective parties.

8. Since the occurrence of the accident, route permit, insurance policy are not disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to the extent of considering the 'monthly income' and the 'future prospect'. The salary receipts depicted the victim received payment on the basis of number of days of working. It is not disputed that the victim was a driver. A driver could have earned Rs.300/- per day in the year 2015 which is not improbable. The Learned Tribunal did not grant the compensation towards the future prospect.

9. PW-2 in his evidence-in-chief stated that the victim was the only earning member of his family, no contrary evidence was adduced by the opposite party insurance company before the Ld. Tribunal. Accordingly, it can be deduced that the father of the victim was dependant on his income.

10. In view of the above observation of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr.***[1] and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***[2] the impugned award of Rs.10,39,000/- is modified as follows: -

Annual Income	Rs 1,08,000	Rs. 9,000/- p.m x 12
Future Prospect	43,200	40% of Rs 1,08,000
Annual Income + Future Prospect	1,51,200	
Deduction towards Personal Expenses	37,800	1/4th of Rs 1,51,200
Total Annual Income	1,13,400	
Multiplier	20,41,200	18
Loss of Estate + Loss of Spousal Consortium + Funeral Expenses	Rs 15,000/- + Rs 40,000/- + Rs 15,000/-	Rs 70,000 + 20% of Rs 70,000 = Rs 84,000/-

[1] 2017(4)TAC 673(S.C)
[2] (2009) 6 SC 121

Total	Rs 21,25,200/-	

11. The appellants/claimants are entitled to a sum of Rs. 21,25,200/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.
12. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs 21,25,200/-along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six months from the date of passing of this order.
13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Suri, Birbhum being MAC Case No.257/2015 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
14. The instant appeal is disposed of accordingly.
15. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
16. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)