IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 69 of 2023
(FMAT 469 of 2014)
with
CAN 1 of 2019
(Old No. CAN 8796 of 2019)

Aksarun Bibi & Ors.
Vs
Reliance General Insurance Company Ltd. & Anr.

For the Appellants	: Mr. Krishanu Banik.
For the Respondent No.1/ Insurance Company	: Ms. Gopa Das Mukherjee.
For the Respondent No.2/ Owner	: None.
Hearing concluded on	: 20.08.2024
Judgment on	: 12.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Claimants against the judgment and award dated 12th day of April, 2013 passed by the Learned Additional District and Session Judge/Tribunal Judge, Motor Accident Claims Tribunal, Fast Track Court, 2nd Court Tamluk, Purba Medinipur, in M.A.C. Case No. 02/278 of 2013/2012, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **THE FACTS :-**

> *"…………At about 10.10 a.m. on 06.02.2012 when the victim Noornabi Mallik was standing near Basulia on the extreme left side 'morum' portion of Haldia-Mecheda 'pitch' road via Tamluk as pedestrian, then suddenly one motorcycle bearing no. WB-30K/4792 coming from Haldia side in tremendous speed, knocked down Noornabi. Due to such rash and negligent driving the person sustained severe bleeding injury on his person, mainly on his head. He became senseless. The victim was first shifted to District Hospital Purba Medinipur. Thereafter due to deterioration of his condition, he was taken to Shreema Nursing Home. And finally on 14.02.2012 he succumbed to his injuries. The victim had a business of prawn farming and the claimants were totally dependent upon him. That due to such death his family is facing great economic crisis and acute hard ship………"*

3. On the other hand, the **Opposite Party no.2/ Reliance General Insurance Company Limited** appeared in this case and contested the suit by filing written objection. In the written objection, the claim petitioner/claimants were denied. It is further submitted that the application u/s 166 of the M.V. Act is not maintainable in its present form and law and there is no cause of action as alleged. It is the specific case of O.P. no.2 i.e. the Insurance Company that the application was vague and indefinite. The petition filed by the petitioner was not in accordance with and in compliance with mandatory provisions of M.V. Act and the Rules framed thereunder. Thus, the claim of claimants is liable to be rejected. Opposite Party no.1 /the owner of the offending vehicle did not contest the suit.

4. The Claimants examined **two witnesses** and proved documents marked **Ext.1 to 8.**

5. The O.P. did not adduce any evidence.

6. **The tribunal finally held as follows :-**

"………MAC Case No. 02/13/MAC Case No. 278/12

Dated:-12.04.2013

…………… It is found on the record that the victim was 28 years of age and he earns about Rs. 13,000/- per month from this business. As from tax return it has come out that the business seems to be a profit making business so we can take 10% income as future prospect and if that be so the monthly income of the victim would be about Rs. 14,300/- per month. As per rule 1/3rd will be deducted considering the same to be used for is personal. Purpose, so the amount remains Rs. 9,534/- as income of the deceased per month. So his income per annum will be Rs. 9534/- X 12 = 1,14,408/-. As per rule of computing compensation the multiplier will be 18. So it come to Rs. 1,14,408/- X 18 = Rs. 20,59,344/- As per nature of the suit the other expenses will be added such as funeral expenses, loss of estate and loss of consortium etc. In this case the petitioner have claimed compensation in the tune of Rs. 15,00,000/- (Rupees Fifteen Lakhs) with interest from the date of filing of this claim. After calculating the compensation I think that amount paid by the petitioner is reasonable and justified one and thus the petitioner will get the compensation of Rs. 15,00,000/- from the Insurance Company. The petitioners are wife, minor daughter, son and mother of the victim/deceased. So all of

them being the legal heirs is entitled to get the compensation amount equally………….

Sd/-
Judge
M.A.C. Tribunal…….”

7. **Being aggrieved the Appellants/Claimants has preferred the present appeal on the ground:-**

That the Learned Tribunal did not grant 'just compensation' to which the Claimants are entitled to under the relevant provisions of law.

8. **From the materials including the evidence in this case, the following is evident :-**

i) The accident in this case caused by the rash and negligent act/driving of the offending vehicle has been proved. **(Ext 1 & 2).**

ii) The offending vehicle had valid insurance **(Ext 3 & 4).**

iii) As seen from the documents proved in support of the income of the deceased, **Exhibit 8 to 8(b),** the income be taken as **Rs 13,000/- per month**.

iv) The aged of the deceased being **28 years** at the time of accident **(Ext. 5, 6, 7), multiplier 17** shall be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

v) **Future prospect** shall be **40%** of established Income as he was self employed. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

vi) Number of claimants being **5**, **1/4th** of the victim's income is to be deducted towards his personal expenses. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

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. 13,000/-*
Annual Income (13,000 x 12)	*Rs. 1,56,000/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 39,000/-*
	Rs. 1,17,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 46,800/-***
	Rs. 1,63,800/-
Multiplier x 17 *(1, 63, 800 x 17)*	***Rs. 27, 84, 600/-***
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. 28, 68, 600/-***

10. Admittedly, the Claimants have received the amount of compensation of Rs. 15,00,000/- 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. 13,68,600/- 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 appeal being FMA 69 of 2023/FMAT 469 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

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

14. There will be no order as to costs.

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

(Shampa Dutt (Paul), J.)