

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**FMAT 1375 of 2013**

**With**

**IA No. CAN 1 of 2013 (Old No. CAN 11168 of 2013)**  
**CAN 2 of 2013 (Old CAN 11786 of 2013)**

**The Oriental Insurance Co. Ltd.**

**Versus**

**Pratima Singha & Ors.**

**With**

**COT 64 of 2014**

**Pratima Singha & Ors.**

**Versus**

**The Oriental Insurance Co. Ltd. and Anr.**

For the Appellant in FMAT 1375/2013

And for the Respondent No. 1 in

COT 64/2014 : Mr. P.K. Pahari, Adv.

For the Appellants in COT 64/2014

And for the Respondent Nos. 1 to 3

in FMAT 1375/2013 : Mr. Krishanu Banik, Adv.

**Heard on** : 08.01.2024

**Judgment on** : 20.02.2024

**Ajay Kumar Gupta, J:**

**In Re: CAN 2 of 2013 (Old No. CAN 11786 of 2013)**

1. This is an application for condonation of delay under Section 173 of the Motor Vehicles Act, 1988 in preferring an appeal beyond the period of limitation i.e. 2 days. It is submitted that there is no intentional laches or negligence on the part of the appellant/Insurance Company to file this appeal beyond the period of limitation. Learned Advocate also referred the paragraphs 4, 6, 7, 8 and 9 to show the causes for delay.

2. On the other hand, learned advocate appearing on behalf of the respondent Nos. 1 to 3/Claimants opposed the prayer for condonation of delay.

3. Heard and on perusal of the application and the paragraphs as referred above, this Court finds the appellant has shown the cause of delay is satisfactory, justified as such accepted. Accordingly, delay, as prayed for, is hereby condoned.

4. Accordingly, **CAN 2 of 2013 (Old No. CAN 11786 of 2013)** is, thus, disposed of.

5. Both the Appeal and Cross-appeal/objection are taken up for the purpose of disposal on merits.

**FMAT No. 1375 of 2013**

**With**

**COT 64 of 2014**

6. The appellant/Insurance Company has filed this instant First Miscellaneous Appeal challenging the judgment and award dated 07.08.2013 passed by Learned Judge, Motor Accident Claims Tribunal, 2<sup>nd</sup> Court, Paschim Medinipur whereby the learned Tribunal allowed the MACC Case No. 298 of 2011 on contest but in part against the Oriental Insurance Company Ltd. and ex parte without cost against the rest. The learned Tribunal directed to pay a compensation of Rs. 3,16,500/- in total

and further directed to make payment of Rs. 1,08,000/- to the petitioner nos. 1 and 2 each and Rs. 1,00,500/- to the petitioner no. 3 towards compensation by way of A/c Payee cheque within 3 months from the date thereof along with interest @ 9% per annum from the date of filing of this case till realization in full. Whereas the Respondent Nos. 1 to 3 filed cross-appeal/objection being COT No. 64 of 2014 being aggrieved by and dissatisfied with the awarded amount of compensation as aforesaid seeking enhancement of the compensation amount with a contention that the learned Tribunal did not assess the actual compensation amount as per the Schedule II of the Motor Vehicles Act. The learned Tribunal also erred in calculating the multiplier as 13 though the multiplier would be 18 in view of the age of the victim. Actual income Rs. 3,300/- per month of the victim has also not considered by the learned Tribunal. Hence, both First Miscellaneous Appeal and Cross-appeal/Objection are taken up together for the purpose of proper disposal.

**7.** The brief facts of this case are as under:

On 27.04.2011 at about 4 am when the deceased as a helper of Pick Van being vehicle no. WB-33/7790, aged about 20 years, was coming from Lowada towards Kharagpur through NH-6 road and when the said vehicle reached near Ashari More, one another truck, which was coming in the same direction dashed the pickup van as a result the pickup van

bearing No. WB-33/7709 capsized on the road and the helper of the vehicle received severe injuries on his person and immediately after such accident, he was removed to hospital by the local people but at the hospital he was declared brought dead by the attending doctor.

It is the allegation of the claimants that accident was occurred due to the rash and negligent driving of the pickup van bearing no. WB-33/7709 though the claimants have filed this claim case under Section 163A of the Motor Vehicles Act and claimed a compensation to the tune of Rs. 5,00,000/- for loss of income, mental pain and agony.

The Oriental Insurance Company Limited contested the case by filing written statement thereby denied and disputed all material facts and allegations of the claimants and further challenged the maintainability of the case and denied its liability to pay the compensation to the claimants on the plea that the pickup van bearing no. WB-33/7709 had no permit to carry passengers being a light goods vehicle on the date of accident. Accordingly, the terms and conditions of the insurance company has been violated by the owner of the pickup van. As such, the insurance company cannot be indemnified the owner.

To prove the case under Section 163A of the Motor Vehicles Act the respondents/claimants examined two witnesses, namely, Pratima

Singha as P.W. 1 and Palash Dey as P.W. 2 and further exhibited number of documents like FIR, Seizure List, Charge Sheet, PM Report and Voter Identity Card those are marked as Exhibits 1 to 5 respectively.

**8.** It is the settled principle of law that when the claim case filed under Section 163A of the Motor Vehicles Act, 1988 be treated under no fault liability and in such cases the claimants shall not require to prove either the rash and negligent driving of the driver of the offending vehicle or negligence of the deceased/injured. The claimants require to be proved only the involvement of the vehicle and the person suffered injury or expired due to such accident. Claimants also need to be proved the earning/income and actual age of the injured person or deceased for adequate calculation of the compensation on a no-fault basis. This instant case pertains to death of Shyamsundar Singha due to motor traffic accident.

**9.** After considering the evidence of the claimants, the learned Tribunal has assessed compensation as aforesaid. Accordingly, the insurance company has filed this First Miscellaneous Appeal praying for setting aside the said judgment and award on the ground that the Ld. Tribunal erred in deducting 1/3<sup>rd</sup> amount from the yearly income of the deceased victim as personal and living expenses when the Hon'ble Apex

Court in various decisions observed that where the deceased was a bachelor, normally 50% should be deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is a possibility of getting married in a short time, in such event the contribution to the other family members is likely to be cut drastically. Furthermore, Claimants being the major sister and father of the deceased are not entitled to get compensation as they were not dependent upon the deceased. Only mother is entitled for compensation as first class heir and dependent.

**10.** At the same time, the respondents/claimants filed COT No. 64 of 2014 being aggrieved by and dissatisfied with the awarded amount of compensation as aforesaid seeking enhancement of the compensation amount with a contention that the learned Tribunal did not assess the actual compensation amount as per the Schedule II of the Motor Vehicles Act. The learned Tribunal also erred in calculating the multiplier as 13 though the multiplier would be 18 in view of the age of the victim and actual income Rs. 3,300/- per month of the victim has also not considered by the learned Tribunal.

**11.** Learned advocate appearing on behalf of the Insurance Company submitted that the learned Tribunal did not consider the victim was

bachelor at the time of accident and his personal and living expenses ought to be deducted 50% assuming that a bachelor would tend to spent more on himself and his contribution to the family would be in lower side. Accordingly, 50% ought to have been deducted though the learned Tribunal erred in deducting 1/3<sup>rd</sup> amount of yearly income of the deceased while calculating total compensation amount. The learned Tribunal has assessed income of deceased as Rs. 3,000/- per month as a helper of pickup van though the claimants failed to prove the actual income by oral or documentary evidence, his income ought to have considered as notional income as stipulated in Schedule II of the Motor Vehicles Act, 1988 i.e. Rs. 15,000/- per annum.

**12.** Per contra, learned Advocate appearing on behalf of the respondents submitted that the learned Tribunal has erred in accepting the wrong multiplier though the victim's age was 28 years old and if it is calculated correctly the multiplier would be 18. Furthermore, the actual income of the victim was claimed by the claimants as Rs. 3,300/- per month, that amount should have been considered by the learned Tribunal while calculating compensation. Learned Advocate prays for enhancement of the compensation amount. He further disputed about the submission made by the Ld. Advocate for the respondent/Insurance company with regard to deduction of personal and living expenses of the deceased as  $\frac{1}{2}$

and further submitted that the learned Tribunal has rightly deducted 1/3<sup>rd</sup> for his personal expenses. He also referred a judgment reported in **United India Insurance Company Ltd. Vs. Shri Buro Mahara & Ors.**<sup>1</sup> to support his contention that while assessing the compensation payable to the claimants, 1/3<sup>rd</sup> of the annual income of the deceased to be deducted from his total income on account of his personal expenses under the Schedule II of the Motor Vehicles Act. The said provision as mentioned in the 2<sup>nd</sup> Schedule itself provides for deduction of 1/3<sup>rd</sup> from the total income of the deceased on account of his personal expenses. Thus, the deduction of the 1/3<sup>rd</sup> from the total income of the victim on account of his personal expenses is statutorily approved in the schedule itself as such there is hardly any scope to hold that in case of death of bachelor, 50% can be deducted from the total income of the deceased on account of his personal expenses if the victim dies bachelor. The Hon'ble High Court further held in the said judgment that it is the settled law that the Courts have no jurisdiction to legislate and/or override the legislative provisions on the basis of reliance of following Judgments:

- (1) Prabhudas Damodar Kotecha & Ors. Vs. Manhabala Jeram Damodar & Anr. reported in 2013 SAR (Civil) 991;
- (2) Union of India & Anr. Vs. Manik Lal Banerjee reported in (2007) 1 WBLR (SC) 841;

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<sup>1</sup> **2015 (2) TAC 753 (Cal)**

(3) Union of India and another Vs. Deoki Nandan Aggarwal reported in AIR 1992 Supreme Court 96;

(4) Rohitash Kumar & Ors. Vs. Om Prakash Sharma & Ors. reported in 2012 SAR (Civil) 890.

So, 1/3<sup>rd</sup> has rightly deducted from his total income on account of his personal expenses as it is statutorily recognized.

**13.** Having heard the submissions of both sides and on perusal of the the evidence and judgment and award passed by the learned Tribunal, this Court has to be considered four issues raised by the parties:

- (i) Whether the offending vehicle was involved in the alleged accident and the victim succumbed to his injuries suffered in such accident?
- (ii) What would be the actual income of the deceased at the time of accident? and
- (iii) What would be the actual deduction from the total income for his personal and living expenses of deceased, who died as bachelor?
- (iv) Whether father and married sister are entitled to get compensation?

**14.** With regard to the issue no. 1, there is no dispute regarding the involvement of the vehicle in the alleged accident. It is well-established by the claimants that the offending vehicle no. WB-33/7709 was capsized on the road and the helper succumbed due to severe injuries suffered on his person. To prove the case filed under Section 163A of the Motor Vehicles Act, the respondents/claimants examined two witnesses, namely, Pratima Singha as P.W. 1 and Palash Dey as P.W. 2 and further exhibited number of documents like FIR, Seizure List, Charge Sheet, PM Report and Voter Identity Card those are marked as Exhibits 1 to 5 respectively. Upon perusal of the Oral and documentary evidence, it is clearly established that the offending vehicle was involved in the accident and deceased died due to injuries suffered in the said accident. Charge sheet and P.M report also corroborate the same. Therefore, there is no doubt above the involvement and death of the victim as such the first issue is decided in favour of the respondents/claimants.

**15.** With regard to the issue no. 2, it is the claim of the claimants that the age of the victim was 28 years old having his income of Rs. 3,300/- per month from his service as a helper of the said pickup van and the mother of the deceased was within the age group of 45 to 50 years. Now the question arises whether it is proved by the claimants that his actual income was Rs. 3,300/- per month? From the evidence, it appears the

claimants failed to prove his actual income. No convincing oral or documentary evidence transpires from the record that the monthly income of the deceased was Rs. 3,300/- though the insurance company did not deny about the profession of the deceased. The accident was occurred on 27.04.2011. Even if claimants failed to prove his income, the Court can take his income as a notional income. What would be the notional income in view of the provision of the Schedule II of the Motor Vehicles Act. The notional income would be Rs. 15,000/- per annum. Rs. 15,000/- has been fixed by the statute long ago and thereafter no amendment was made for enhancement of notional income even expiry of several years. Under such circumstances, even if the income of the victim considered or compare with unskilled labour then his income would be at least Rs. 3,000/- per month in view of the decision delivered in **Laxmi Devi's Case (Supra)** in the year 2008 but the accident occurred on 27.04.2011. Thus, prices of essential commodities and income of the person increased considerably by efflux of time. Under such circumstances, claim of claimants that the deceased's income Rs. 3,300/- per month appears genuine and reasonable. Hence, the income of the deceased can be safely accepted as Rs. 3,300/- per month prior to the accident.

**16.** So far as the third issue is concerned while assessing the compensation payable to the claimants, 1/3rd of the annual income of the

deceased to be deducted from his total income on account of his personal and living expenses under the Schedule II of the Motor Vehicles Act. The said provision as mentioned in the 2<sup>nd</sup> Schedule itself indicates for deduction of 1/3<sup>rd</sup> from the total income of the deceased on account of his personal and living expenses. Thus, the deduction of the 1/3<sup>rd</sup> from the total income of the victim on account of his personal expenses is statutorily approved in the Schedule II of the M.V. Act, 1988 and noted that the amount of compensation so arrived at in case of fatal accident claims shall be reduced by 1/3<sup>rd</sup> in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. As such there is hardly any scope to hold that in case of death of bachelor, 50% can be deducted from the total income of the deceased on account of his personal expenses if the victim dies bachelor and case filed under Section 163A of Motor Vehicles Act. In the referred judgment, the Hon'ble High Court further held it is the settled law that the Courts have no jurisdiction to legislate and/or override the legislative provisions as appears in the Act itself. In addition, there are three claimants. Therefore, this Court also does not find any error in accepting the deduction 1/3<sup>rd</sup> of personal and living expenses of the victim, who was bachelor on the date of accident in view of the decision made in aforesaid judgment as well as Constitution Bench decision of Hon'ble Supreme Court pass in **National**

**Insurance Company Limited Vs. Pranay Sethi & Ors.**<sup>2</sup> wherein it is held deduction for personal and living expenses should be 1/3<sup>rd</sup> when deceased unmarried and dependent family member is more than the parents i.e. family members are 2 to 3 adverting the dictum of Hon'ble Supreme Court held in **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**<sup>3</sup> with approval.

**17.** While calculating the compensation amount, the Learned Tribunal taken multiplier as 13 considering the age of the parents on the date of accident. So, this Court has to decide whether a multiplier would be 13 or 18. Claimants have claimed in their claim application the age of the deceased was 28 years old at the time of accident. Even at the time of examination of P.W.1, claimed he was 28 years old at the time of accident. P.M. report also corroborated the same. Accordingly, it can be safely accepted that the deceased died at age of 28 years which comes within the age group of 25 to 30 years and for that actual multiplier would be 18 as per Schedule II of the Motor Vehicles Act, 1988.

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<sup>2</sup> (2017) 16 SCC 680

<sup>3</sup> (2009) 6 SCC 121

**18.** With regard to last issue is concerned, in view of judgment passed in **The National Insurance Company Limited Vs. Birendra & Ors.**<sup>4</sup> the claimants i.e. father and married sister are also entitled to get compensation as they are legal representative and compensation constitutes part of estate of deceased.

**19.** Keeping in mind of the above observations and judgments of the Hon'ble Apex Court, the calculation of compensation would be assessed as follows:

**CALCULATION OF COMPENSATION**

|                                                                   |                |
|-------------------------------------------------------------------|----------------|
| Monthly Income                                                    | Rs. 3,300/-    |
| Total Annual Income<br>3,300 X 12                                 | Rs. 39,600/-   |
| 1/3 <sup>rd</sup> Deduction of<br>personal and living<br>expenses | Rs. 13,200/-   |
| Total income                                                      | Rs. 26,400/-   |
| Multiplier 18<br>(Rs. 26,400/- X 18)                              | Rs. 4,75,200/- |
| General Damages<br>Loss of estate and<br>funeral expenses         | Rs. 4,500/-    |
| Total Compensation                                                | Rs. 4,79,700/- |

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<sup>4</sup> (2020) 11 SCC 356

|                                |                |
|--------------------------------|----------------|
| Less awarded<br>Compensation   | Rs. 3,16,500/- |
| Total Enhanced<br>Compensation | Rs. 1,63,200/- |

**20.** Thus, the Respondents/claimants are further entitled to get enhanced compensation amount to the tune of Rs. 1,63,200/= (Rs. One Lakh Sixty-Thirty Thousand Two Hundred Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. 26.09.2011 till final payment.

**21.** It is informed that the respondents/claimants have already received the compensation amount of Rs. 3,16,500/- in terms of the award of the learned Tribunal as such interest would be calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. 26.09.2011 till payment, if not already paid.

**22.** The appellant/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 1,63,200/= (Rs. One Lakh Sixty-Thirty Thousand Two Hundred Only) together with the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

**23.** Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the enhanced awarded compensation amount as well as compensation awarded by the learned Tribunal as indicated above, shall release the amount in favour of the respondents/claimants in equal share to the respondents/claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid.

**24.** The impugned judgment and award of the learned Tribunal dated 07.08.2013 is modified to the extent only as aforesaid.

**25.** With the above observations, the instant appeal being **FMAT 1375 of 2013** is dismissed without order as to costs. Consequently, **CAN 1 of 2013 (Old CAN 11168 of 2013)** is, thus, disposed of. At the same time, **COT 64 of 2014** is also disposed of with above observation.

**26.** Let a copy of this Judgment along with Lower Court records, if received be sent back to the learned Tribunal forthwith for information.

**27.** All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

**28.** Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

**(Ajay Kumar Gupta, J)**

P. Adak (P.A.)