

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 737 of 2022

Mira Rani Biswas @ Mira Biswas & Others

Versus

New India Assurance Company Limited & Others

For the Appellants/Claimants : Mr. Krishanu Banik, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Parimal Kumar Pahari, Adv.

Heard on : 19.02.2024

Judgment on : 09.04.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants assailing the judgment and award dated 31st March, 2008 passed in MAC Case No. 330/2006 (Old No. 1657/2001) by the Learned Judge, Motor Accident Claims Tribunal -cum- Fast Track Court No. 2, Barasat, North 24-Parganas whereby the learned Tribunal Judge allowed a compensation to the tune of Rs. 1,32,842/- along with interest @ 6% per annum from the date of filing of the claim application till realization in an application filed under Section 166 of the Motor Vehicles Act, 1988 by the wife of the victim, Mira Rani Biswas and on behalf of her two minor sons and two daughters claiming compensation to the tune of Rs. 3 Lakhs along with interest from the date of filing of the claim application on account of the death of Asutosh Biswas in a motor traffic accident which was occurred on 01.02.2001.

2. The brief facts of this case are as under:

2a. On 01.02.2001 at about 9.30 hours, the offending vehicle bearing No. WB-25A/3208 (Matador) was proceeding along Jessore Road from Habra side towards Bongaon side at a very high speed in most rash and negligent manner. When the said offending vehicle came near Angulkata More, under Gaighata P.S., it knocked down the victim Asutosh

Biswas, as a result of that he sustained severe injuries on his person and he was removed to Habra Hospital for treatment. But as his condition was very serious, he was shifted to R.G. Kar Medical College & Hospital and then P.G. Hospital, where he expired on 06.02.2001. It is alleged that the rash and negligent driving on the part of the driver of the said offending vehicle (Matador) was the sole cause of the said pathetic accident. A Criminal case started against the driver of the said vehicle being Gaighata P.S. Case No. 10 dated 08.02.2001 u/s 279/304A IPC.

2b. It is further case of the appellants/claimants is that the victim was 48 years old at the time of accident and used to earn Rs. 5,000/- per month from his business of cloths. It is further averred by the appellants/claimants that the victim was a person of sound health with active habits and was the only earning member of his family and due to his sudden death, the entire family has been suffering from acute financial crisis with mental pain and agony. So, the appellants/claimants have claimed Rs. 3,00,000/- as compensation.

2c. The Opposite Party No. 1/owner of the offending vehicle has not contested the case. The Opposite Party No. 2/New India Assurance Company Limited has contested the case by filing written statement denying, *inter alia*, all the material allegations made in the claim petition.

It is denied by O.P. No. 2 that any accident took place as alleged involving the alleged offending vehicle. It is also denied by the O.P. No. 2 that if any accident is proved, then the appellants/claimants have to prove the said accident took place due to the negligent driving of the driver of the offending vehicle. The specific plea of the O.P. No. 2 is that the amount of compensation claimed by the appellants/claimants is excessive, abnormal and without any legal basis. It is also case of the O.P. No. 2 that the deceased himself was solely responsible for the accident and as such the OP No. 2 is not liable to pay the compensation. On the aforesaid grounds, the O.P. No. 2 has prayed for dismissal of the case with cost.

2d. After considering the case of both the parties and appreciation of evidence both oral and documentary, the Learned Tribunal Judge assessed the compensation to the tune of Rs. 1,32,842/- together with interest as indicated above.

2e. Feeling aggrieved by and dissatisfied with the said inadequate compensation amount, the appellants/claimants preferred this appeal. As such, the same has come up before this Bench for disposal.

Submissions on behalf of the Appellants/Claimants:

3. Learned advocate appearing on behalf of the appellants/claimants submitted that the learned Tribunal Judge was wrong in assessing income of the deceased as Rs. 20,000/- per annum instead of minimum Rs. 36,000/- since the victim was a businessman and he was selling cloths. He used to earn between Rs. 3,000/- to Rs. 5,000/- per month in average from the said business. However, the learned Tribunal Judge did not consider the said income. Furthermore, no future prospect or general damages has been added with the compensation amount in view of the law declared by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & Ors.**¹. As such the claimants are also entitled to get compensation towards the head of future prospect and general damages.

3a. Finally, he prays for enhancement of compensation after considering actual income, future prospect and general damages.

Submissions on behalf of the Respondent No. 1/Insurance Company:

4. Per contra, learned counsel appearing on behalf of the Respondent No. 1/Insurance Company submitted that though the claim of the appellants/claimants is that the victim was a businessman of cloths but

¹ (2017) 16 SCC 680

no sufficient document brought on record to rely the contention of the claimants that his income was Rs. 3,000/- to Rs. 5,000/- from his business of cloths. Neither trade licence nor book of account brought on record to substantiate their claim that he was business of cloths. Accident took place on 01.02.2001. Therefore, the learned Tribunal Judge rightly assessed his income as Rs. 20,000/- per annum as a notional income. There is no question of interference of such assessment. The learned Court below has deducted personal expenses of the victim as 1/3rd though it should be 1/4th considering the number of family members. However, on his usual fairness, he submitted that the victim is entitled to future prospect @ 25% and general damages of Rs. 84,000/- in view of the law declared by the Hon'ble Supreme Court in **Pranay Sethi's Case (supra)**. He prays for modification of the said compensation amount as per law.

Discussions, Analysis and conclusion of this Court:

5. Having heard the submissions of the parties and on perusal of the judgment, documents as well as evidence of the parties, this Court finds the appellants have proven with oral and documentary evidence regarding the date, time, mode and manner of accident. There is also no dispute that the victim not died due to motor traffic accident, which was occurred on 01.02.2001 by involving offending vehicle bearing No. WB 25-A/3208 (Matador). It is substantiated with sufficient evidence that the driver of the

offending vehicle was sole responsible for the said accident. It is also not disputed that the vehicle was not insured with the insurance company. However, from the submissions of both the parties and considering the case of both parties, this Court has to decide what would be the actual compensation entitle by the appellants/claimants in the instant case.

6. From the perusal of the evidence brought on record by the claimants, this Court finds the victim was the only earning member and he had cloth business and his income claimed by the claimants was Rs. Rs. 5,000/- per month in average in the claim application. However, during submission, learned counsel appearing on behalf of the appellants/claimants submitted on his usual fairness that his actual earning was in between Rs. 3,000/- to Rs. 5,000/- per month and he used to spend his income for day-to-day expenses for his entire family members. Due to sudden death of the victim, the entire family has been suffering acute financial crisis with mental pain and agony. It is true that the accident took place on 01.02.2001 as such at least minimum income would have considered by the learned Tribunal Judge as Rs. 3000/= per month. Even an unskilled labour a person could have earn Rs. 100/- per day to run his family. Accordingly, his income may be safely assessed as Rs.3000/- per month and Rs. 36,000/- per annum.

7. It appears from the judgment that the learned Tribunal has assessed Rs. 9,500/- on account of general damages but from the perusal of the judgment reported in **Pranay Sethi's Case (supra)**, it should be allowed Rs. 84,000/- as general damages towards the head of loss of state, loss of consortium and funeral expenses.

8. Apart from that, the claimants are also entitled to get future prospect in view of the aforesaid judgment passed in **Pranay Sethi's Case (supra)**. Victim's age was 48 years old at the time of accident and it is proved by documentary evidence before the learned Tribunal. If it is considered his age is 48 years, he would be above the age of 40 years on the date of accident. If the age is more than 40 years, the actual future prospect would be considered 25% of the total yearly income of the deceased. The age of the victim was 48 years old at the time of accident in view of claim application as such deceased falls in the age group of 46 to 50 years and for that, multiplier would be 13. The family member is more than four as such deduction ought to be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ in view of the judgement reported in **Pranay Sethi's Case (supra)**.

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

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Total Annual Income Rs. 3,000/- X 12	Rs. 36,000/-
Add 25% Future Prospect	Rs. 9,000/-
Total income	Rs. 45,000/-
1/4 th Deduction for personal living expenses	Rs. 11,250/-
Total Income after deduction	Rs. 33,750/-
Multiplier 13 (Rs. 33,750/- X 13)	Rs. 4,38,750/-
Add General Damages	Rs. 84,000/-
Total Compensation	Rs. 5,22,750/-
Less awarded amount received	Rs. 1,32,842/-
Total enhanced Compensation receivable	Rs. 3,89,908/-

10. Thus, the appellants/claimants and Respondent No. 3, Miss Sikha Biswas, daughter of deceased Asutosh Biswas are entitled to get enhanced compensation amount to the tune of Rs. 3,89,908/= (Rs. Three Lakhs Eighty-Nine Thousand Nine Hundred and Eight Only) which shall carry interest @ 6% per annum from the date of filing of the claim application till final payment.

11. It is informed that the appellants/claimants and Respondent No. 3, Miss Sikha Biswas, daughter of deceased Asutosh Biswas have already received the compensation amount of Rs. 1,32,842/- in an application filed under Section 166 of the Motor Vehicles Act, 1988 as such interest would be calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application till final realization, if not already paid.

12. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 3,89,908/= (Rs. Three Lakhs Eighty-Nine Thousand Nine Hundred and Eight 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 four weeks from date.

13. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants and Respondent No. 3, Miss Sikha Biswas, daughter of deceased Asutosh Biswas in equal share upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

14. The impugned judgment and award dated 31st March, 2008 passed in MAC Case No. 330/2006 (Old No. 1657/2001) by the Learned Judge, Motor Accident Claims Tribunal -cum- Fast Track Court No. 2, Barasat, North 24-Parganas is modified to the above extent.

15. The legal guardian and mother of the minor claimants shall deposit the compensation amount as per their share in a fixed deposit scheme in any nationalised bank or post office in their respective name till attending their majority.

16. With the above observations, the instant appeal being **FMA 737 of 2022** is, thus, allowed without order as to costs. Connected applications, if any, are also, thus, disposed of.

17. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

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

19. 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.)