12.06.2024
Ct. no.3
ss/23

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

FMAT 42 of 2019

Usha Manandhar(Subba) & Anr.
Vs.
The National Insurance Co. Ltd. Ors.

Mr. Subir Banerjee
Mr. Abhijit Raha
...for the appellants-claimants

Mr. Gobinda Saha
..for the respdt.no.1-insurance Co.

This appeal is preferred against the judgment and award dated 15th May, 2018 passed by the learned Judge, Motor Accident Claims Tribunal cum- District Judge, Jalpaiguri in MAC case no.263 of 2014 granting compensation of Rs.24,86,920/- in favour of the claimants-appellants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 11th July, 2014 at about 8-00 p.m. while the victim was returning home from Naxalbari side by driving his motor cycle bearing registration no. WB-74-U-4707 at that time the offending vehicle bearing registration no. WGV-6070 (truck) in a rash and negligent manner dashed the motor cycle of the victim on NH-31 near Kestopur, P.S. Bagdogra, District Darjeeling, as a result of which the victim sustained severe injuries. Immediately the victim was shifted to NBMC Hospital where the attending the Doctor declared him dead. On account of sudden demise of the deceased, the claimants being the wife and minor daughter of the deceased filed application for compensation under Section 166 of the Motor Vehicles Act, 1988.

In order to establish their case the claimants examined two witnesses and filed documents, which were marked as **Exhibits 1** to **15** respectively.

The insurance Company contested the claim application but did not adduce any evidence.

Despite service of summons, the owner of the offending vehicle, respondent no.2 did not appear before the learned Tribunal. In the aforesaid backdrop, the service of notice of appeal upon the respondent no.2, owner of the offending vehicle stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.24,86,920/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned

Tribunal, the claimants have preferred the present appeal.

Mr. Subir Banerjee, learned advocate for the appellants-claimants submits as follows. The learned Tribunal erred in determining the income of the victim by deducting house rent allowance, provident fund and group insurance from gross income whereas it ought to have deducted professional tax of Rs.130/- only from the gross income. Further, the learned Tribunal ought to have granted 50% of the annual income of the victim towards future prospect instead of granting a lump sum amount of Rs.5,00,000/-, since at the time of death, the victim was a government employee aged about 32 years, following the principles laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***. The appellants-claimants are also entitled to general damages of Rs. 70,000/- together with enhancement at the rate of 10% every three years following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra).* He in his usual fairness submits that the multiplier should be 16 instead of 17 adopted by the learned Tribunal following the proposition laid down by the Hon'ble

Supreme Court in ***Sarla Verma (Smt.) & Ors. versus Delhi Transport Corporation & Anr.*** reported in ***(2009) 3 WBLR (SC) 700***, since at the time of accident the victim was 32 years of age. Further though the learned Tribunal allowed interest as a default clause but failed to grant interest on the compensation amount. In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

Mr. Gobinda Saha, learned advocate appearing on behalf of the respondent no.1-insurance company submits that as the income of the victim per annum exceeds Rs.2,50,000/- hence as per the income tax slab for assessment year 2014-15 such income in excess of Rs. 2,50,000/- is amenable to tax at the rate of 10% on such amount. He also submits that the multiplier to be adopted in the present case should be 16, since the victim at the time of accident was 32 years of age.

Having heard the learned advocates for the respective parties, the following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim. *Secondly*, whether the appellants-claimants are entitled to the future prospect 50% of the annual income of the deceased; *thirdly*, whether the appellants-claimants are entitled to general damages of Rs.70,000/- together with enhancement of 10% every three years; *fourthly*, whether the multiplier should be 16 instead of 17 adopted by the learned Tribunal and *lastly,* whether the claimants are entitled to interest on the compensation amount.

With regard to the first issue relating to determination of income, it is found that the learned Tribunal has considered the net income of the victim for assessment of compensation. It no more *res integra* that the actual income of the victim should be gross income less professional tax and income tax. As per the salary slip (**Exhibit 13/1**) the gross income of the victim is Rs.16,245/- per month. The professional tax is Rs.130/- per month. Therefore, the actual income of the victim should be gross income of Rs.16,245/- less professional tax Rs.130/-, which comes to Rs.16,115/-. It is found that the annual income of the victim is not taxable, thus the argument on behalf of the respondent no.1-Insurance Company that annual income of the victim is amenable to tax does not stand to reason.

So far as the second issue regarding future prospect is concerned, it is found that the learned tribunal has granted a lump sum amount of Rs.5,00,000/- towards future prospect. Be that as it may, it is not in dispute that the victim at the time of accident was aged about 32 years and was a permanent government employee. Following the proposition of Hon'ble Supreme Court in *Pranay Sethi (supra)* the claimants are entitled to future prospect of 50% of the annual income of the victim towards future prospect.

With regard to the third issue, the claimants are also entitled to general damages of Rs.70,000/- together with enhancement of 10% every three years following the proposition of Hon'ble Supreme Court in *Pranay Sethi (supra)* The judgment in *Pranay Sethi (supra)* was delivered by the Hon'ble Supreme Court in the year 2017. Almost 6 years have lapsed since passing of the judgement as such there shall be enhancement of 20% towards general damages.

So far as the fourth issue relating to multiplier is concerned, it is found that the learned Tribunal has adopted multiplier of 17. The victim at the time of accident was 32 years, as such the multiplier should be 16 as per decision of Hon'ble Supreme Court in *Sarla Verma (supra)* as has been rightly submitted by

Mr. Banerjee, learned Advocate for the appellants-claimants.

With regard to the last issue relating to interest on compensation, it is found that the learned Tribunal has imposed interest as a default clause and did not grant interest on the compensation amount. In view of Section 171 of the Motor Vehicles Act, the claimants are entitled to interest on the compensation amount which as per prevailing banking rate should be @ 6% per annum from the date of filing of the claim application till deposit.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.16,245/-
Less: Professional tax	Rs.(-) 130/-
	Rs.16,115/-
Annual income (Rs.16,115/- x 12)	Rs.1,93,380/-
Add: 50% of the annual income towards future prospect	Rs.96,690/-
	Rs.2,90,070/-
Less : 1/3rd towards personal and living expenses	Rs.96,690/-
	Rs.1,93,380/-
Multiplier 16 (Rs.1,93,380/- x 16)	Rs.30,94,080/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 20% enhancement on general damages	Rs. 14,000/-
Total amount	Rs.31,78,080/-

Thus, the claimants are entitled to compensation of Rs. 31,78,080/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

It is informed that the claimants have already received compensation amount of Rs.24,86,920/- in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.6,91,160/- together with interest on the compensation assessed at Rs.31,78,080/- from the date of filing of the claim application till deposit.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation together with interest as indicated in the foregoing paragraph before the learned Registrar, High Court at Jalpaiguri Circuit Bench within a period of six weeks from date.

The appellants-claimants are directed to deposit balance Court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid balance amount of compensation and interest as indicated above, the learned Registrar, High Court at Jalpaiguri Circuit Bench shall disburse the amount in favour of the claimants in equal share after payment of Rs.48,000/- in favour of the widow, appellant no.1 towards spousal consortium upon satisfaction of their identity and payment of balance court fees, if not already paid.

The appellant no.1 being the mother and natural guardian of the minor appellant no.2 shall receive the share of the minor and shall keep the share of the minor in a fixed deposit scheme of any nationalized bank or post office till attainment of majority of said minor.

With the aforesaid observations, the appeal being **F.M.A.T. 42 of 2019** stands disposed of. The impugned judgment and award is modified to the above extent. No order as to costs.

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

Interim order, if any, stands vacated.

Lower court records be sent down to the learned court below in accordance with the rules.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)