19.06.2024
Ct. 3
D/L 47
ab/sn

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURIDICTION

FMAT 43 of 2019

Rama Banik
-VS-
The National Insurance Company Ltd. & Anr.

Mr. Subir Banerjee
... for the appellant-claimant

Mr. Hirak Barman
... for the respondent no.1- insurance company

This appeal is preferred against the judgment and award dated 9th January, 2018 passed by the learned Judge, Motor Accident Claims Tribunal-cum- leaned District Judge, Jalpaiguri in MAC Case No. 160 of 2015 granting compensation of Rs. 20,50,000/- in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th, July, 2014 at about 7.45 p.m. while the victim was returning from Kerseong side to Siliguri side by a vehicle bearing registration No. WB-74P-9696 (LMV) along with his three friends, at that time the offending vehicle bearing registration No. WB-76-3448 dashed from behind. As a result of which, the victim sustained grievous injuries and immediately was shifted to Sukna Primary Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the claimant being the widow filed application for compensation of Rs. 32,50,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish her case examined three witnesses including herself and produced documents, which have been marked as **Exhibits 1** to **19** respectively.

The claim application was keenly contested by the respondent no. 1-insurance company. The respondent no. 1-insurance company also adduced the evidence of one witness and produced documents, which have been marked as **Exhibits A, B** and **C** respectively on objection.

Respondent no. 2-owner of the offending vehicle filed his written statement and cross-examined the P.W. 1 but subsequent thereto did not contest the claim application. In the aforesaid backdrop, service of notice of appeal upon the respondent no. 2-owner offending vehicle stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 20,50,000/- in favour of the claimant 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 claimant has preferred the present appeal.

Mr. Subir Banerjee, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the annual income of the victim by considering the flow of income whereas it ought to have considered the annual income reflected in the income tax return for assessment year 2013-14 filed return just prior to accident disclosing income of Rs. 2,00,100/-. He further submits that the learned Tribunal did not grant any future prospect. The claimant is entitled to future prospect of 40% of the annual income of the victim since at the time of accident, the victim was 38 years of age and was a businessman. The general damages has been granted to the tune of Rs. 2,000/- only, which should be Rs. 70,000/- plus enhancement of 20% since six years have elapsed from the date of passing of the judgment by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** as laid down therein. He, in his usual fairness, submits that the multiplier should be 15 instead of 16 adopted by the learned Tribunal following the proposition laid down by the Hon'ble Supreme Court in ***Sarla Verma versus Delhi Transport Corporation*** reported in ***2009 ACJ 1298.*** Moreover, the compensation amount should also carry an interest at the rate of 6% per annum at the least since the learned Tribunal failed to grant the same. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellant-claimant, Mr. Hirak Barman, learned advocate for the respondent no. 1-insurance company submits that the learned Tribunal considering the flow of the income of the deceased has determined the annual income at Rs.1,92,000/- which is appropriate in the facts and circumstances of the case and does not call for any interference. Further, no document in respect of the business of the deceased has been produced. In the light of the aforesaid submissions, he prays that the judgment and award of the learned Tribunal should be affirmed.

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 claimant is entitled to future prospect @ 40% of the annual income of the victim. *Thirdly*, whether the claimant is entitled to general damages of Rs.70,000/- together with enhancement of 20%. *Fourthly*, whether the multiplier should be 15 instead of 16 adopted by the learned Tribunal and *lastly*, whether the claimant is 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 income of the victim at Rs.1,92,000/-. As per the computation of the total income tax thereon at page 71 of the paperbook it is found that the return for the assessment year 2013-14 has been submitted on 9th January, 2014 which is prior to the accident on 27th July, 2014. As per Income Tax Acknowledgement **(Exhibit-19)**, the gross total income of the victim for the assessment year 2013-14 is Rs. 2,01,000/- and the tax is nil. Therefore, the actual annual income of the victim should be Rs.2,01,000/-.

It has been strenuously argued on behalf of the respondent no.1-insurance company that such income of the victim should not be accepted since it is not supported by the documents of business. In ***Kalpanaraj & Ors. versus Tamil Nadu State Transport Corporation*** reported in ***(2015) 2 SCC***

764, the Hon'ble Supreme Court endorsed the view of the High Court as correct in determining the monthly income on the basis of income tax return which is the only available documentary evidence on record of the monthly income of the deceased. Thus such argument does not stand to reason.

With regard to the second issue relating to entitlement of future prospect, it is found that the learned Tribunal has not granted compensation towards future prospect. It is not in dispute that at the time of accident, the victim was 38 years of age and was a businessman. Following the proposition of *Pranay Sethi (supra)* the claimant is entitled to future prospect of 40% of the annual income of the victim.

With regard to the third issue relating to entitlement of general damages, the learned Tribunal has granted Rs. 2,000/- towards funeral expenses. Be that as it may, following the proposition of Hon'ble Supreme Court in *Pranay Sethi (supra)* the victim is entitled to Rs.70,000/- towards general damages under the heads of loss of estate, loss of consortium and funeral expenses. Since 6 years have elapsed from the date of passing the judgment of the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimant is entitled to enhancement of 20% on the general damages.

With regard to the fourth issue relating to multiplier, it is found that the learned Tribunal has adopted multiplier 16. The claimant at the time of accident was 38 years of age. Following the observation in *Sarla Verma (supra)* the multiplier should be 15 instead of 16, as has been rightly indicated by Mr. Banerjee, learned advocate for the appellant-claimant.

Coming to the last issue relating to entitlement of interest on the compensation amount, it is found that the leaned Tribunal has granted interest as default clause. However, it failed to grant any interest on the compensation amount. In view of Section 171 of the Motor Vehicles Act, the claimant is entitled to interest on the compensation amount. Bearing in mind prevailing banking rate of interest, the compensation should carry interest of 6% per annum.

The other factors have not been challenged in this appeal.

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

<u>Calculation of Compensation</u>

Annual income	Rs.2,01,000/-
Add: 40% of the annual income towards future prospect	Rs.80,400/-
	Rs.2,81,400/-
Less: 1/3rd towards personal and living expenses	Rs.93,800/-
	Rs.1,87,600/-

Multiplier 15 (Rs.1,87,600/- x 15)	Rs.28,14,000/-
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	Rs.28,98,000/-

Thus, the claimant is entitled to compensation of Rs. 28,98,000/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

It is informed that the claimant has already received an amount of Rs. 20,50,000/- in terms of the order of the learned Tribunal. Accordingly, the claimant is entitled to balance amount of compensation of Rs. 8,48,000/- together with interest @ 6% per annum on the compensation assessed 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 and the interest as indicated above by way of cheque before the learned Registrar, High Court at Jalpaiguri Circuit Bench within a period of six weeks from date.

The appellant-claimant is directed to deposit *ad valorem* Court fees on the balance 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 appellant-claimant, upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal 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**.)