HIGH COURT AT CALCUTTA
In the Circuit Bench at JALPAIGURI
(Civil Appellate Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 4 of 2023

Lipika Roy and Others

Versus

United India Insurance Company Limited and Another

For the Appellants : Ms. Kalpana Roy, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Rishin Chakraborty, Adv.

Heard on : 23.08.2024

Judgment on : 25.09.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants against the Judgment and Award dated 30th day of March, 2022 passed by the Learned Judge, Motor Accident Claims Tribunal -cum- Learned Additional District Judge, 3rd (Special) Court at Jalpaiguri in M.A.C. Case No. 73 of 2020 thereby the Learned Judge allowed the application filed under Section 166 of the M.V. Act, 1988 on contest without any cost.

2. By the said Judgement and Award dated 30.03.2022, the Learned Judge directed the Respondent No. 1/United India Insurance Company Limited to issue four A/c payee cheques, out of which three cheques of Rs. 1,44,800/- only in the name of petitioner no. 2, Payel Roy, petitioner no. 3, Uma Roy and petitioner no. 4, Anibala Roy and another cheque of Rs. 1,84,800/- only in the name of petitioner no. 1, Lipika Roy. It was further directed to the mother of the minors, namely, petitioner no. 1, Lipika Roy to deposit the cheque amount of Rs. 1,44,800/- only each issued in the name of the minors' petitioner no. 2, Payel Roy and petitioner no. 3, Uma Roy with any Nationalized Bank/Post Office or MIS till attaining their majority with a liberty to withdraw the interest thereof for the welfare and upbringing of said minors.

3. The Insurance Company was further directed to issue the cheques within a period of thirty days from passing the Judgment and Award, in default of payment of the compensation amount within the stipulated period as stated above, the petitioners would be at liberty to execute the same as per law and further the same would carry an interest @ 6% per annum from the date of filing of the claim application i.e. on and from 26.02.2020 till realization of the amount.

4. The factual matrix is relevant for the purpose of disposal of this instant appeal as under:

4a. On 26.11.2019 at about 19.30 hours, the victim, Uttam Roy was returning home by riding his motorcycle bearing registration no. WB-72V-1812 from Hospital Para. When he reached at Ganesh More, Dhupguri, suddenly a truck bearing registration no. WB-71-2571 which was coming from opposite direction at a high speed and in a rash and negligent manner dashed the motorcycle as a result a serious accident occurred.

4b. The victim, Uttam Roy sustained grievous injuries on his person. Immediately, he was taken to Dhupguri Rural Hospital for his treatment. From there he was referred to Jalpaiguri Sadar Hospital for his better treatment but he was further shifted to Anandalok Multi-Speciality

Hospital in Siliguri and ultimately, he was shifted to North Bengal Medical College & Hospital for his better treatment but he finally succumbed to his injuries.

4c. Post mortem of the dead body of the victim was held at North Bengal Medical College & Hospital under U.D. Case No. 1164/2019, dated 30.11.2019.

4d. Dhupguri P.S. Case No. 477 of 2019, dated 27.11.2019 was registered against the driver of the offending truck for the offence punishable u/s 279/338/427 of the Indian Penal Code. After culmination of investigation, the Police has submitted charge sheet u/s. 279/427/304A of the Indian Penal Code against the driver of the offending vehicle bearing registration no. WB-71-2571.

4e. After the death of the deceased, Uttam Roy, the appellants/claimants herein being the legal heirs and representatives filed a case under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 15,00,000/- contending therein that the deceased was a skilled worker and used to earn Rs. 8,000/- per month. Due to sudden death of the deceased, Uttam Roy, appellants/claimants suffered financial loss, pain and agony as he was the only sole bread earner of the family. He used to contribute his entire income for the benefit and the welfare of his family members.

4f. The Insurance Company had contested the case by filing a written statement denying and disputing all the material allegations made by the complainant. After considering the pleadings and appreciation of the evidence on record, both oral and documentary evidence, led by the parties, Learned Tribunal finally allowed the application and awarded a total sum of Rs. 6,19,200/- and directed to issue cheques in the name of the appellants/claimants as aforesaid.

4g. Being aggrieved by and dissatisfied with the said compensation amount, the appellants/claimants filed this Appeal on the grounds that the Learned Tribunal has wrongly assessed less income of the victim as Rs. 3,300/- Per month prior to the accident. No Future Prospect and interest from the date of filing application till final realisation were allowed by the Learned Tribunal, despite it is an well-settled principle of law as laid down by the Hon'ble Supreme Court that when the victim died in a motor traffic accident, the claimants are also entitled to Future Prospect as well as Interest on the awarded compensation from the date of filing of the claim application till realisation.

5. Learned Counsel appearing on behalf of the appellants/claimants submitted that it is true that no documentary evidence was brought on record to prove the actual income of the victim but Learned Tribunal should have considered his income at least Rs. 6,000/- per month since he was a skilled labour. He was a healthy young man and was the sole earning member of the family consisting of 5 members including himself. It was unexpected to maintain the family members with an income of Rs. 3,300/- per month but the Learned Tribunal did not consider the said factual aspect. In view of the celebrated Judgment passed in ***Pranay Sethi*** (supra), the compensation amount would be higher than the awarded compensation. Finally, learned counsel for the appellants prays for enhancement of the compensation.

6. Per contra, the learned counsel appearing on behalf of the Insurance Company vehemently opposed the prayer of the appellants/claimants and further submitted that driver of the offending vehicle was not responsible for the said accident. Actually, the accident occurred due to the sole rash and negligent riding of the motor cycle by the victim. Alternatively, he further submitted that accident may have taken place due to contributory negligence since the accident took place on head on collusion as such Respondent No. 1/Insurance Company is not liable to pay entire compensation amount.

7. It was further submitted that the Learned Tribunal has rightly considered that the Appellants could not be able to prove the actual income of the victim either by way of satisfactory oral or documentary evidence. In such circumstance, the Learned Tribunal had no other option but to consider his income as Rs. 3,300/- per month. It was considered by the Learned Tribunal on the basis of notional income. Furthermore, there are 4 family members. Therefore, the deduction would be $1/4^{th}$ of the actual income instead of $1/3^{rd}$ of the actual income. The Learned Tribunal further erred in considering the multiplier of the instant case as 18 though it should be 17 considering the actual age of the deceased in a case filed under Section 166 of the Motor Vehicles Act, 1988. Under such circumstances, he prays for dismissal of the instant case.

8. Heard the rival contentions of the parties and on perusal of the evidence on record, both oral and documentary as well as Judgment and Award passed by the Learned Tribunal, this Court is of the view that the claimants have proved the case in respect of rash and negligent driving by the driver of the offending vehicle bearing registration no. WB-71-2571. The documents like the FIR, Charge Sheet and Post Mortem Report also corroborated the contention of the Appellants. The contention of the Insurance Company with regard to sole rash and negligent riding of the motor cycle and/or contributory negligence, this Court does not find any cogent, reliable and satisfactory evidence or materials to hold that the Insurance Company proved even by preponderance of probability about the contributory negligence. Respondent No. 1/Insurance Company even could not bring any evidence either oral or documentary to prove the contention of the contributory negligence or rash and negligent riding of the motor cycle by the victim Uttam Roy. Until and unless the plea of contributory negligence has not been proved, the Court cannot come to a conclusion that the accident was taken place due to contributory negligence of the motorcyclist. The contributory negligence could not be taken as a matter of presumption. Accordingly, Respondent No. 1/Insurance Company failed to prove about the contributory negligence on the part of the deceased by any valid or cogent evidence. No iota of evidence transpired from the record to rely on the contention of the Insurance Company in context of rash and negligent riding of the motor cycle or any contributory negligence on the part of the victim.

9. It further appears from the Judgment and Award passed by the Learned Tribunal that Learned Tribunal has held that the appellants/claimants failed to prove the income of the deceased either by oral or documentary evidence as a skilled labour. The Learned Tribunal considered his income as Rs. 3,300/- as a notional income. Furthermore, the Learned Tribunal also considered the multiplier as per the 2nd Schedule of the Motor Vehicles Act, 1988, though the instant case has been filed under Section 166 of the Motor Vehicles Act, 1988. It is erroneously assessed the multiplier as 2nd Schedule of the Motor vehicle Act, 1988 is only applicable in the claim case filed under Section 163A Motor Vehicles Act, 1988.

10. With regard to the issue raised by the appellants pertaining to entitlement of future prospect, it is found that the Learned Tribunal did not grant any amount on this head. In this regard, the Hon'ble Supreme Court in the case of ***Pranay Sethi*** **(supra)** has laid down the proposition towards future prospect in the case of self-employed and method of calculation as, *inter alia*, as follows:

> *"In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The Established income means the income minus the tax component".*

11. In the light of above discussion and proposition laid down by the Hon'ble Apex Court, the appellants are also entitled to get an additional amount of 40% of the annual income of the deceased, who was below the age of 40 years towards future prospect because in the present case in hand, the victim's age was duly proved as 28 years on the date of accident. Age was duly proved by the appellants by filing Post Mortem report issued by the North Bengal Medical College and Hospital showing the age of the victim was 28 years on the date of accident.

12. So far as the interest is concerned, it would be appropriate to refer the Judgment passed by our Hon'ble High Court reported in a Case of ***Rekha Dutta & Ors. vs. Ram Avatar Lohia & Anr.***[1] wherein this Hon'ble High Court held that:

> *"In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of* ***Alok Shanker Pandey vs. Union of India and Ors reported in AIR 2007 SC 1198****:*

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[1] **2009 (3) TAC (Cal) 783**

> *"It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B."*
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> *(Emphasis supplied)*

13. Consequently, the claimants are also entitled to get interest on the awarded compensation amount from the date of filing of the claim application till realization.

14. In view of observation made in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another***[2] and later Larger Bench of the Hon'ble Supreme Court affirmed the said manner of selection multiplier in ***National Insurance Co. Ltd Vs. Pranay Sethi & others***[3] by indicating therein that the selection of multiplier shall be as indicated in the paragraph in **Sarla Verma's** case be considered as, *inter alia*, as follows:

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[2] **(2009) 6 SCC 121**
[3] **(2017) 16 SCC 680**

M-18 for (15 to 25 years)
M-17 for (26 to 30 years)
M-16 for (31 to 35 years)
M-15 for (36 to 40 years)
M-14 for (41 to 45 years)
M-13 for (46 to 50 years)
M-11 for (51 to 55 years)
M-9 for (56 to 60 years)
M-7 for (61 to 65 years)
M-5 for (66 to 70 years)

15. Age of the victim proved as 28 years old prior to the accident. Hence, multiplier would be 17 considering the age group of the deceased falls between the age group of 26 to 30 years as indicated above.

16. With regard to the deduction, it appears the family members of the victim are wife and two daughters and mother and if consists four family members then 1/3rd deduction from the total income was rightly accepted by the Learned Tribunal. With regard to the income of the victim is concerned, even if claimants could not be able to prove the income of the deceased as Rs. 8,000/- per month either by oral or documentary evidence then also the Learned Tribunal should have considered income of the victim more than Rs. 3, 300/= per month because it is difficult on the part of the family members to prove a day labourers' monthly income by any documentary evidence as they work as a daily basis. Generally, people do not prefer to pay wages in documentary form to labour who works on daily basis. It appears from the Judgment and Award that the Learned Tribunal has assessed the income of the victim as notional income Rs. 3,300/- per month when they failed to produce any document in support of the deceased's income. It is true that claimants failed to prove the actual income of the victim with cogent evidence and if they fail, then Court has no option but to take a notional income but that should be reasonable. If this Court considers the Judgment passed in ***Laxmi Devi vs. Md. Tabbar and Anr.***[4] where the Hon'ble Supreme Court held that when the claimants failed to prove the income of the victim, then Rs. 3,000/- may be accepted as notional income in the year 2008. In the said Judgment, the Hon'ble Supreme Court further held that even an unskilled labour could have earned Rs. 3,000/- per month. In the instant case, accident took place in the year 2019 after elapse of more than 10 years of the aforesaid Judgment. Therefore, earning of even an unskilled labour should have enhanced. A sum of Rs. 200/- per day could be reasonable in the year 2019. Therefore, his income can be safely accepted as Rs. 6,000/- per month.

[4] **2008 (2) T.A.C. 394 (SC)**

17. Moreover, this Court finds the Learned Tribunal assessed the medical expenses to the tune of Rs. 74,000/= towards treatment of the victim in the hospital on the basis of medical bills proved by the appellants. Medical bills were brought on record and same was marked as Exbt. 7 collectively. Therefore, this Court can also safely accept such expenses towards treatment of the victim to the tune of Rs. 74,000/= without any hesitation since the Insurance Company fails to rebut the evidence of the P.W. 1 and disproves the medical bills.

18. 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. 6,000/-
Total Annual Income Rs. 6,000/- X 12	Rs. 72,000/-
Add 40% Future Prospect	Rs. 28,800/-
Total income	Rs. 1,00,800/-
1/3rd Deduction for personal living expenses	Rs. 33,600/-

Total Income after deduction	Rs. 67,200/-
Multiplier 17 (Rs. 67,200/- X 17)	Rs. 11,42,400/-
Add Funeral Expenses and Loss of Estate and Consortium with addition of 10%	Rs. 77,000/-
Medical expenses	Rs. 74,000/-
Total Compensation	Rs. 12,93,400/-
Compensation already received	Rs. 6,19,200/-
Total Compensation Receivable	Rs. 6,74,200/-

19. Thus, the appellants/claimants are further entitled to get enhanced compensation amount to the tune of Rs. 6,74,200/- (Rs. Six Lakhs Seventy-Four Thousand Two Hundred Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 26.02.2020 till final payment. In addition, Claimants are also entitled to receive interest @ 6% on the awarded compensation amount of Rs. 6,19,200/- (Rupees Six Lakhs Nineteen Thousand Two Hundred Only), if not paid earlier.

20. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount to the tune of Rs. 6,74,200/- (Rs. Six Lakhs Seventy-Four Thousand Two Hundred Only) together with the interest as indicated above by way of cheques in the name of the appellants/claimants equally before the Court of Learned Additional District Judge, 3rd (Special) Court at Jalpaiguri within a period of four weeks from date.

21. Learned Additional District Judge, 3rd (Special) Court at Jalpaiguri, upon deposit of the compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the appellants/claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

22. Mother and natural guardian of the minors shall deposit the awarded compensation amount of the minors in the nationalized bank or post office under fixed deposit scheme till their attaining majority and file receipt thereof before the Learned Tribunal to that effect with a liberty to withdraw the interest accrued thereof for the welfare and upbringing of said minors.

23. With the above observations, the instant appeal being **FMA 4 of 2023** is, thus, **allowed** without order as to costs with aforesaid modification. Connected applications, if any, are also, thus, disposed of.

24. Let a copy of this Judgment along with Trial Court Records, if any, be sent back to the Learned Court below forthwith for information.

25. All parties will act on a server copy of this Judgment and Order uploaded from the official website of High Court at Calcutta.

26. 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.)