20.06.2024
Ct. 3
D/L 85
Sn/ss

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

FMA 7 of 2023

Sakhina Khatun & Ors.
-VS-
The Managing Director, North Bengal State Transport Corporation

Dr. Pabitra Pal Chowdhury
Mr. Kuntal Sarkar
Mr. Debangshu Modak
... for the appellants-claimants

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
... for the respondent –Corporation

This appeal is preferred against the judgment and award dated 30th March, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Malbazar, Jalpaiguri in MAC Case No. 38 of 2019 granting compensation of Rs.4,94,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 4th June, 2019 at about 4-30 p.m. while the victim was returning to home by riding bi-cycle at that time the offending vehicle bearing registration No. WB-63/3698(Bus) of North Bengal State Transport Corporation dashed the victim from behind and as a result of which the victim sustained severe injuries and was immediately removed to Jalpaiguri Super Speciality Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the claimants being the wife, son and daughters filed application for compensation of Rs. 8,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **10** respectively.

The claim application was keenly contested by the respondent–North Bengal State Transport Corporation. However, the respondent-Corporation did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.4,94,000/- together with interest 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.

Dr. Pabitra Pal Chowdhury, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim. The claimants in their claim application categorically stated that the victim at the time of accident used to earn Rs.8,000/- to Rs.10,000/- per month, by selling vegetable. P.W.1, Sakhina Khatun, wife of the victim also deposed in support of the income of the deceased. Further, independent witness PW-3, Mahammad Abdul Rahaman who is also a vegetable seller deposed that the victim used to earn average of more or less Rs.10,000/- to Rs.12,000/- per month. Such evidence in support of the income of the deceased has remained uncontroverted in cross-examination. Therefore, keeping in mind the rate of inflation and the prices of essential commodities the income of the deceased should at least be considered at Rs.8,000/- per month. He also submits that the learned Tribunal ought to have granted general damages of Rs.70,000/- instead of Rs.10,000/- along with escalation of 20% on such amount in view of decision of Hon'ble Supreme court passed in ***National Insurance Company Limited versus Pranay Sethi***, reported in ***2017 ACJ 2700***. In light of aforesaid submission, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Ms. Supriya Singh, learned Advocate for the respondent-Corporation submits that the appellants-claimants failed to produce any documentary evidence in support of their claim of income of the deceased. Therefore, the income as determined by the learned Tribunal is correct and should be affirmed. She prays for dismissal of the appeal.

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 claimants are entitled to general damages of Rs.70,000/- with escalation of 20%.

With regard to the first issue relating to determination of income, it is found that the claimants have contended that the victim at the time of accident used to earn Rs.8,000/- to Rs.10,000/- per month by selling vegetables. The wife of the victim Sakhina Khatun, P.W.1 has also deposed that her husband used to earn Rs.8,000/- to Rs.10,000/- per month. P.W. 3, Mahammad Abdul Rahaman who is also a vegetable seller has also deposed that the victim used to earn the average of Rs.10,000/- to Rs.12,000/- per month. It is a fact that the claimants have not produced any documentary evidence in support of business of the victim. Be that as it may, the Hon'ble Supreme

Court in ***Syed Sadiq and others versus Divisiional Manager, United India Insurance Company Limited,*** reported in ***(2014) 2 SCC 735*** held as follows :

> *"**8.** The appellant claimant in his appeal further claimed that he had been earning Rs 10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd. [(2011) 13 SCC 236 : (2012) 3 SCC (Civ) 452 : (2012) 1 SCC (Cri) 825] , has held as under: (SCC pp. 242-43, paras 13-15)*
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> > *"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs 4500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs 3000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs 100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs 3000 per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim.*

In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs 100 to Rs 150 per day or Rs 4500 per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs 4500 to Rs 3000 per month. We, therefore, accept his statement that his monthly earning was Rs 4500."

***9.** There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs 6500 per month."*

Bearing in mind the proposition of the Hon'ble Supreme Court as above and also keeping in mind the price of essential commodities and the state of economy prevalent during the time of accident, this

Court is of the view that a monthly income of Rs.6,500/- per month of the victim would be just and reasonable consideration in the facts and circumstances of the present case.

Now, coming to the second issue relating to grant of general damages, it is found that the learned Tribunal has granted general damages of Rs.10,000/-. Following the proposition of Hon'ble Supreme Court in *Pranay Sethi and Others (supra)* the claimants are entitled to general damages at Rs.70,000/-. Since six years have elapsed from passing of the judgment in *Pranay Sethi (supra)* the claimants are entitled to escalation of general damages at the rate of 20%.

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.6,500/-
Add : 10% future prospect	Rs.650/-
	Rs.7,150/-
Annual Income	Rs.85,800/-
Less: 1/3rd towards personal and living expenses	Rs.28,600/-
	Rs.57,200/-
Multiplier 11 (Rs.57,200/- x 11)	Rs.6,29,200/-
Add: General damages	Rs.70,000/-
Add: 20% enhancement on general damages	Rs.14,000/-
Total	Rs.7,13,200/-

Thus, the claimants are entitled to compensation of Rs. 7,13,200/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

It is informed by the learned Advocate for the appellants-claimants that the claimants have not received any compensation in terms of the order passed by the learned Tribunal.

Accordingly, the respondent-The Managing Director, North Bengal State Transport Corporation is directed to deposit the aforesaid amount of compensation together with interest as indicated above by way of a cheque 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 *ad valorem* Court fees on the compensation assessed, if not already paid.

Upon deposit of the aforesaid amount of compensation and interest as indicated above, the learned Registrar, High Court at Jalpaiguri Circuit Bench shall disburse the amount, after making payment of Rs.48,000/- in favour of the appellant no.1-wife of the victim towards spousal consortium, in the proportion of 50% in favour of appellant no.1 and remaining amount in equal shares in favour of the appellant nos.2, 3 and 4, subject to satisfaction of their 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**.)