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

FMAT (MV) 3 of 2024
CAN 1 of 2024

Sabana Begam & ors.
-VS-
The National Insurance Co. Ltd. & anr.

Mr. Bikash Singha
Mr. Abdul Habib
Mr. K.D. Narayan
… for the appellants-claimants

Ms. Supriya Singh
… for the respondent no.1–Insurance Co.

This appeal is preferred against the judgment and award dated 22nd June, 2018 passed by learned Judge, Motor Accident Claims Tribunal-cum-District Judge, Jalpaiguri in M.A.C. Case No. 286 of 2015 granting compensation of Rs.7,22,000/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 8th June, 2015 at about 6:30 p.m. while the victim, Hazrat Ali was coming from Birpara towards his house at that time the offending vehicle bearing registration No. WB-74/G-7490 coming in a high speed and in rash and negligent manner dashed the victim from behind. As a result of such accident, the victim sustained severe injuries and died on the spot. On account of sudden demise of the victim, the claimants being the wife, minor son, minor daughter and mother of the deceased filed application for grant of compensation to the tune of Rs.8,75,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claim case was keenly contested by the respondent no.1-Insurance Company by filing a written statement.

Respondent no.2-owner of the offending vehicle did not contest the claim application and the same was allowed *ex parte* against him.

The claimants in order to establish their case examined claimant no.1, Sabana Begam as PW1 and one Md. Nasir as PW2 and also produced documents, which have been marked as **Exhibits 1** to **9** respectively.

The respondent no.1-Insurance Company did not adduce any evidence in support of its case.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.7,22,000/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Bikash Singha, learned Advocate appearing for the claimants submits that the learned Tribunal ought to have determined the income of the victim at

Rs.6,000/- per month since the same remained unchallenged in cross-examination. In support of his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Angad Tiwari and anr. -versus- National Insurance Co. Ltd. and anr,*** reported in ***2024(4) TAC 353 (S.C.).*** He also submits that the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd adopted by the learned Tribunal since at the time of accident the deceased had four dependants. Moreover, claimants are entitled to 40% of the annual income of the victim towards future prospect which has not been awarded by the learned tribunal in favour of the claimants. Furthermore, the leaned Tribunal erred in granting only Rs.2,000/- towards funeral expenses under general damages. Furthermore, the children are also entitled to parental consortium. To buttress his contention he relies on the decision of the Hon'ble Supreme Court passed in ***Janabai and others -versus- I.C.I.C.I. Lombord Insurance Co. Ltd.,*** reported in ***2022(3) T.A.C. 705 (S.C.).*** Moreover, he submits that an amount equivalent to 20% of the general damages should also be taken into consideration in view of the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi*** reported in ***2017 ACJ 2700*** as more than 7 years have elapsed since passing of the judgment by the Hon'ble Supreme Court. He, in his usual fairness, submits that since at the time of accident, the victim was 28 years of age, the multiplier should be 17 instead of 18 adopted by the learned Tribunal in view of the decision of the Hon'ble Supreme Court passed in ***Sarla Verma and Others versus Delhi Transport Corporation Ltd. & Another*** reported in ***(2009) 6 SCC 121***. He also indicates that the learned Tribunal failed to grant interest on the compensation amount. In light of his aforesaid submission, he prays for enhancement of the compensation amount.

On the contrary, Ms. Supriya Singh, learned Advocate for the respondent no.1-Insurance Company submits that the claimants though claimed that the victim at the time of accident was working in a shop but they have failed to produce any documents of such employment of the deceased. Therefore, the income assessed by the learned Tribunal to the tune of Rs.5,000/- per month is acceptable. As regards the other ground of enhancement of compensation is concerned, she leaves the matter to the discretion of this Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration before this Court.

(i) Whether the learned Tribunal erred in determining the income of the victim to the tune of Rs.5,000/- per month ?

(ii) Whether the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd ?

(iii) Whether the claimants are entitled to future prospect of 40% of the annual income of the victim ?

(iv) Whether the claimants are entitled to general damages together with escalation of 20% ?

(v) Whether the minor children are entitled parental consortium ?

(vi) Whether multiplier should be 17 instead of 18 adopted by the learned Tribunal?

(vii) Whether the claimants are entitled to interest on the compensation amount from the date of filing of the claim application till realization?

With regard to first issue relating to determination of income of the victim to the tune of Rs.5,000/- per month by the learned Tribunal, it is found from the averments made in the application that at the time of accident the victim was in service. P.W. 1, Sabana Begam, wife of the victim in her evidence stated that her deceased-husband at the time of accident used to work in a shop and his monthly income was Rs.6,000/- per month. Be that as it may, the claimants have not taken any endeavour to produce any witness from the said shop where the victim used to work to primarily establish the occupation of the victim. Needless to mention that no such documents have been produced pertaining to the service/employment of the victim in the said shop. In ***Sri Ramachandrappa versus The Manager, Royal Sundaram Alliance Insurance Company Limited*** reported in ***(2011) 13 SCC 236***, the Hon'ble Supreme Court observed as follows:

> *"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 the 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. . . ."*

Bearing in mind the aforesaid proposition, applying certain guess work and also keeping in mind the prices of the commodities, this Court is of the opinion that the learned Tribunal has rightly determined the income at the rate of Rs.5,000/- per month. The decision in *Angad Tiwari (supra)* is distinguishable in facts.

So far as the second issue relating to the deduction towards personal and living expenses of the deceased is concerned, it is found that the learned Tribunal has deducted 1/3rd of the annual income of the victim towards his personal and living expenses. However, in view of the observation of the Hon'ble Supreme Court in *Smt. Sarla Verma (supra)* since at the time of accident the number of dependants of the deceased-victim was 4, the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd.

As regards the third issue pertaining to grant of future prospect, it is found that the learned Tribunal has not granted any amount towards future prospect. Be that as it may, following the proposition laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* since admittedly at the time of accident the victim was 28 years of age and presumed to be in self-employment or on fixed salary, the claimants are entitled to future prospect of 40% of the annual income of the victim.

Since the issue nos.4 and 5 pertains to entitlement of general damages alongwith escalation and parental consortium, they are taken up together. It is found that the learned Tribunal has granted compensation of Rs.2,000/- on head of funeral expenses only. Be that as it may, in view of the decision of the Hon'ble Supreme Court in *Pranay Sethi (*supra) the claimants are entitled to general damages under the heads of loss of estate, funeral expenses and loss of consortium to the tune of Rs.15,000/-, Rs.15,000/- and Rs.40,000/- respectively. Further following the observation in *Pranay Sethi (supra)* as 7 years have elapsed since passing of the judgment in the year 2017, the claimants are entitled to 20% escalation on the general damages.

Relying on the decision of Hon'ble Supreme Court in *Janabai (supra)*, learned advocate for the appellants-claimants submits that the minor children of the deceased is entitled to 'parental consortium' on account of demise of their father. The amount towards the conventional head namely 'loss of consortium' has been settled by the Hon'ble Supreme Court in *Pranay Sethi's case (supra)* after considering all other earlier decisions passed by it and even noted that in different cases different amounts under conventional heads have been granted. The Constitution Bench took note of the following decisions at paragraph no.48 such as in ***Sarla Verma's Case*** *[2009 ACJ 1298 (SC)],* the court granted Rs.5,000/-under the head of loss to estate, Rs.5,000/- towards funeral expenses and Rs. 10,000/-towards loss of consortium whereas in ***Santosh Devi's Case*** *[2012 ACJ 1428 (SC)]* the court granted Rs. 5,000/-for transportation of the body, Rs.10,000/-as funeral expenses and Rs.10,000/-as regards loss of consortium and again in ***Rajesh's Case*** *[2013 ACJ 1403 (SC)]* the court granted Rs. 1,00,000/- towards loss of consortium and Rs.25,000/-towards funeral expenses and Rs.1,00,000/-for loss of care and guidance to minor children. It has also quoted with approval the meaning of 'consortium' from paragraph no.17 in *Rajesh's Case's (supra)***.** After accepting that the concept of 'consortium' was confined to spouse or consort, the allowance for loss of care and guidance of minor children as provided in *Rajesh's Case* (supra) was found to be unacceptable at paragraph no.54 in *Pranay Sethi's case (supra)* which is reproduced hereunder.

" 54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh, 2013 ACJ 1403 (SC). It has granted Rs. 25,000/-towards funeral expenses, Rs.1,00,000/-for loss of consortium and Rs.1,00,000/-towards loss of care and guidance to minor children. The head relating to loss of care to minor children does not exist. Though the Rajesh (supra) refers to Santosh Devi, 2012 ACJ 1428 (SC), it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that a rise in price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. The principle of re-visiting the said heads is an acceptable principle. But the re-visit should not be fact- centric or quantum- centric. We think that it would be condign that the amount we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10 per cent in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads"

Upon conjointly going through paragraph no.48 and paragraph no.54 of the decision in *Pranay Sethi's case (supra)* it is quite evident that the head under 'loss of consortium' is confined only to the spouse.

The additional quantum on account of parental consortium as awarded in *Janabai (supra)* is at best been allowed in exercise of authority under Article 142 of the Constitution of India in order to render complete justice in the facts and circumstances of the case. As a court of appeal under Section 173 of 1988 Act, this court does not have such power. It is clear that the amount towards loss of estate, loss of consortium and funeral expenses has already been quantified by the Constitution Bench of Hon'ble Supreme Court in *Pranay Sethi's case (supra)* at Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. Once the decision of the Constitution Bench of the Hon'ble Supreme Court is cited it must be applied and no different view can be subscribed as it is a law laid down within the meaning of Article 141 of the Constitution of India. Accordingly, no further amount shall be granted towards loss of consortium beyond the figure provided as above by the Constitution Bench. For the reasons as above the subsequent decision in *Janabai (supra)* cannot be applied as the amount of compensation to be awarded as consortium will be governed by the principles as laid down in *Pranay Sethi's case (supra).*

With regard to the sixth issue relating to multiplier, it found that the learned tribunal has adopted multiplier of 18. However, since at the time of accident, the victim was 28 years of age, hence following the observation of Hon'ble Supreme Court in *Sarla Verma (supra)*, the multiplier to be adopted should be 17 instead 18 adopted by the learned Tribunal, as has been rightly pointed out by Mr. Singha, learned Advocate for the claimants.

With regard to the last issue relating to interest on compensation, it is found that the learned Tribunal has granted interest as a default clause. Be that as it may, in terms of Section 171 of the Motor Vehicles Act, the claimants are entitled to interest @ 6% per annum on the amount of compensation from the date of filing of the claim application till realisation of the amount.

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

<u>Calculation of Compensation</u>

Monthly income	Rs.5,000/-
Annual income (Rs.5,000/- x 12)	Rs.60,000/-
Add : 40% future prospect	Rs.24,000/-
	Rs.84,000/-
Less: 1/4th towards personal and living expenses	Rs.21,000/-
	Rs.63,000/-
Multiplier 17 (Rs.63,000/- x 17)	Rs.10,71,000/-
Add: General damages	Rs.70,000/-
Add: 20% enhancement on general damages	Rs.14,000/-
Total	Rs.11,55,000/-

Thus, the claimants are entitled to compensation of Rs.11,55,000/- 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 received the amount of compensation of Rs.7,22,000/- in terms of the order passed by the learned Tribunal.

Accordingly, the Insurance Company is directed to deposit the balance amount of compensation and interest on the entire compensation amount @ 6% per annum as indicated above by way of a cheque before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri within a period of four 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 balance amount of compensation and interest as indicated above, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall disburse the amount in favour of the claimants, after making payment of Rs.40,000/- plus Rs.8,000/-, as escalation, towards spousal consortium to appellant-claimant no.1, widow of the deceased, in the proportion at 40% in favour of the appellant no.1-wife and 20% each to both the minor children and the mother, being appellant nos.2 to 4 respectively, subject to satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The appellant no.1, being the mother and natural guardian of appellant nos.2 and 3 shall receive the shares of the said minors and shall keep the same in a fixed deposit scheme of any nationalized bank or post office till attainment of majority of the said minors.

With the aforesaid observations, the appeal being **FMAT (MV) 3 of 2024** stands allowed. 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 orders, if any, stand vacated.

Let the trial court records be sent to the learned Trial Court in accordance with the rules.

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

(**Bivas Pattanayak, J**.)