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The High Court At Calcutta
Jalpaiguri Circuit Bench

FMA 30 of 2023

Sunati Roy & Ors.
Vs
Shriram General Insurance Company Ltd. & anr.

Mr. Gobinda Saha
Mr. Tamal Kr. Sen,
Ms. Priyanka Dey,
Mr. Milan Ch. Laskar.
... For the Appellants.
Mr. Partha Bhowmik.
... for the respondent/Insurance Company.

<u>Fact:</u>

This appeal has been filed assailing the judgment and order passed on 07.06.2023 in connection with Motor Accident Claim Case No. 226 of 2016 under Section 166 of the Motor Vehicle Act, wherein Learned Motor Accident Claim Tribunal, Additional District Judge, 3rd (Special) Court, Jalpaiguri awarded compensation to the tune of Rs. 47,35,600/- (Forty Seven Lakh Thirty Five Thousand Six Hundred).

The appellants being legal representatives of Swapan Kumar Roy since deceased, filed one claim application under Section 166 of the Motor Vehicles Act, seeking compensation delineating, inter alia, that on 22nd May 2016 at about 5.00 p.m. victim Swapan Kumar Roy was proceeding towards Dhupguri by riding one motorcycle having registration No. WB 74S-4030, while one vehicle bearing registration No. RJ-

26GB-0511 (Truck) proceeding on wrong side with high speed dashed against the motorcycle of Swapan Kumar Roy since deceased near Over Bridge under Dhupguri, District-Jalpaiguri.

After the accident, victim Swapan Kumar Roy sustained grievous injury and he was shifted to Dhupguri PHC and from there he was shifted to Jalpaiguri Sadar Hospital wherein he was declared brought dead.

Consequently Dhupguri Police Station Case No.141 of 2016 dated 26.05.2016 was started against the driver of the offending truck bearing no. RJ-26GB-0511 for the offence punishable under section 279/338/304(A) of the Indian Penal Code. Further case of the claimants is that victim Swapan Kumar Roy was CT GD under Director General, Central Reserve Police Force and he had a gross salary to the tune of Rs. 34,350/- per month and he was the only earning member of his family consisting of his mother, wife and minor daughter.

It is pertinent to mention here that at the time of accident the offending truck was duly insured with Shriram General Insurance Company Ltd.

The claim petition was filed on 10.06.2016 by all the claimants mentioned above with a prayer for compensation to the tune of Rs. 50 lakhs along with interest.

Both the Insurance company as well as owner of the offending vehicle entered appearance in the case and filed their respective written objection but ultimately owner of the vehicle did not contest this case.

Evidence of this Case:

On behalf of the claimants two witnesses were examined namely Pratima Roy, as PW1 and Samir Kumar Deb as PW2.

On behalf of the claimants FIR, formal FIR, certified copy of the seizure list, certified copy of the chargesheet, certified copy of the post-mortem report, copy of the insurance company showing the number of offending vehicle and xerox copy of the pay slip of the victim, Swapan Kumar Roy for the month of May, 2016 were admitted in evidence as exhibit 1 to 7.

In opposition to that on behalf of the insurance company, one witness Mihir Kumar Basu (Investigator) was examined as O.P.W 1 and in course of his examination authorization letter and investigation report was admitted in evidence as exhibit A and B.

Observation of the Learned Trail Judge:

Learned Judge framed as many as eight issues and recorded his finding that the claimants succeeded to prove the accident alleged in the claim petition as well as the rash and negligent driving of the offending vehicle ignoring the defence of contributory negligence in the absence of any cogent evidence on behalf of the insurance company. In fact, Learned Judge relied on the evidence of PW 2 who happens to be a passer by near the place of accident and also an eye witness to the accident which took place due to rash and negligent driving of the offending vehicle.

To eschew the proximity, I refrain myself from going into the detail of alleged accident and death of Swapan Kumar Roy in an accident involving one vehicle bearing registration No. RJ-26GB-0511 (Truck), which was also found proved in terms of evidence adduced on behalf of the claimants. That apart, learned counsel on behalf of the insurance company/respondent could not submit anything contrary to the observation recorded by the learned Tribunal.

Analysis:-

Learned counsel appearing on behalf of the claimants raised three issues in this appeal:-

a) Learned Tribunal considered the income of the deceased in terms of salary certificate (Exhibit – VII collectively) excluding the House Rent Allowance;

b) Learned Tribunal recorded wrong multiplier in terms of age proof by Job Identity Card (Exhibit – VII);

c) Learned Tribunal did not consider the interest under Section 171 of the Motor Vehicles Act.

Issue – a:-

In support of the income of the deceased, learned counsel appearing on behalf of the appellants has relied on a case of ***National Insurance Company Ltd. Vs. Indira Srivastava & Ors.*** Reported in ***1 (2008) ACC 162 (SC)*** and submits that the learned Tribunal at the time of assessing the award under the Motor Vehicles Act only took the income tax and professional tax and in respect of deduction of House Rent Allowance which is not permissible.

In opposition to that, learned counsel appearing on behalf of the respondent/insurance company has relied on the observation of the learned Tribunal with regard to assessing the income of the deceased at the relevant point of time, rightly in terms of salary certificate (Exhibit – VII).

At the very outset, I would like to reproduce the principle ratio delineated in paragraph 19 of ***Indira Srivastava & Ors. (supra),*** which runs as follows:-

"If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some

elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."

From the pay slip for the month of May, 2016 (Exhibit – VII), I find that total salary of the deceased was Rs.25,350/-. Applying the ratio of ***Indira Srivastava & Ors. (supra),*** I am of the considered view that the salary of the deceased ought to be Rs.25,350/- (entire gross salary) instead of Rs.24,300/- after deducting the House Rent Allowance.

Issue –b:-

Learned counsel appearing on behalf of the appellants has referred to particularly, the job identity card, filed before the learned Tribunal, of the deceased, who was admittedly a member of Central Reserve Police Force and submits that his date of birth was recorded in the Identity Card as 14.06.1985 though in salary certificate date of birth was written as 16.06.1985.

Learned counsel appearing on behalf of the respondents/insurance company has drawn my attention to the judgment passed by the learned Tribunal and submits that only pay slip of the victim was admitted in evidence as Exhibit – VII and therefore, the learned Tribunal took the age of the victim from the Post-Mortem report. I am not agreeable with the learned counsel appearing on behalf of the respondent on this issue as age written in the Post-Mortem report cannot be said to be a cogent evidence to prove the age of the victim. From the P.M. report it does not appear that ossification test was made before writing about the age in the Post-Mortem report.

Therefore, the figure of age mentioned in the P.M. report cannot be considered as the authenticated age put by the Post-Mortem doctor.

On the other hand, I find that the learned counsel appearing on behalf of the appellants has referred to the certified copy of the Identity Card and salary certificate of the competent authority, which were filed before the learned Tribunal though, I find no observation regarding admission of certified copy of the same. But, credibility of those documents cannot be denied as it not the case of either of the parties that the deceased was not a member of Central Reserve Force at the relevant point of time.

In this circumstances, no other alternative is found before this Court to rely on those documents particularly, the salary certificate as well as Identity Card of the deceased while keeping an eye to the object of the M.V. Act, 1988 which is to provide compensation for accident victims and facilitate claims for injury or death caused by accidents.

Even if I took the contradiction of two days in calculating the age of the deceased, he cannot be said to be a person of having age more than 30 years 11 months 8 days.

Therefore, the deceased Swapan Kumar Roy did not belong to the age group of 30 to 35 years rather was in the bracket of 26 to 30 years against the multiplier of 17.

Issue – C:-

It is pertinent to mention here that in terms of provision of Section 171 of the Motor Vehicles Act, Tribunal ought to record the interest along with award. In the case at hand, learned Tribunal did not impose any interest on the awarded amount in compliance with the provision of Section 171 of the Motor Vehicles Act. Therefore, claimants are entitled to get interest on the awarded amount as well.

Conglomeration of all discussions, mentioned hereinabove, leads to the following calculation of award:-

Monthly Income Rs.25,300/-	= Rs.25,300/-
Annual Income be Assessed at Rs.	= Rs.3,03,600/-
Future Prospects be assessed 50%	= Rs.1,51,800/-
Total Income	=Rs.4,55,400/-
Deduction 1/3rd on account of personal living expenses	=Rs.3,03,600/-
Use of Multiplier as per age of 30 (Rs.3,03,600/- X 17)	=Rs.51,61,200/-
General Damages as per Pranay Sethi	

Is Rs.70,000/- (Rs.40,000/ for consortium,
Rs.15,000/- for loss of estate,
Rs.15,000/- for funeral expenses) = Rs.70,000/-
Total of Rs. =**Rs.52,31,200/-**

It is reported by the learned counsel appearing on behalf of the parties to this appeal that claimants have already received the awarded amount to the tune of 47,35,600/- (Forty Seven Lakh Thirty Five Thousand Six Hundred).

Therefore, claimants are now entitled to get balance amount of Rs.4,95,600/- with interest at the rate of 6% per annum from the date of filing of the claim application i.e. 10.06.2016 on entire awarded amount.

Accordingly, Insurance Company is directed to deposit the amount along with interest before the learned Tribunal within four weeks from date.

Learned Tribunal is requested to disburse the amount to the claimants in equal share on proper identification and proof.

With the aforesaid observation **FMA 30 of 2023** stands disposed of. Pending application, if there be any, also stands disposed of accordingly.

Trial Court Record along with a copy of this order be remitted back immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)