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

FMA 9 of 2023

Anjali Chakraborty & anr.
-VS-
The National Insurance Co. Ltd. & anr.

With

FMA 8 of 2023
CAN 1 of 2023

The National Insurance Co. Ltd.
Vs.
Anjali Chakraborty & ors.

Mr. Subir Banerjee
Mr. Abhijit Raha
... for the appellants-claimants in FMA 9 of 2023 and respondent nos.1 & 2 in FMA 8 of 2023

Ms. Supriya Singh
Mr. Ved Rai
... for the respondent–Insurance Co. in FMA 9 of 2023 and appellant-Insurance Co. in FMA 8 of 2023

Both these appeals being FMA 9 of 2023 and FMA 8 of 2023 have been preferred against the judgment and award dated 28th June, 2022 passed by Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 3rd (Special) Court, Jalpaiguri in M.A.C. Case No. 409 of 2021 granting compensation of Rs.14,26,696/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th June, 2021 at about 4:15 a.m. while the victim, Anjan Chakraborty along with his friend, Sourav Saha was returning to home by riding motorcycle at that time when they reached Jhajhangi Flyover, another bike bearing registration No. WB-72F-7120 which was coming in a high speed and also in rash and negligent manner dashed them. As a result of which, the victim and his friend, Sourav Saha sustained severe injuries on their persons. Immediately, they were taken to Moynaguri Hospital where the attending medical officer declared the victim as brought dead. The friend of the victim was shifted to Siliguir Hospital for better treatment. In relation to the accident and death of the victim, his mother and dependant sister filed application for grant of compensation to the tune of Rs.24,80,000/-under Section 166 of the Motor Vehicles Act, 1988.

The claim case was keenly contested by the Insurance Company by filing a written statement.

The owner of the offending vehicle also filed his written statement. However, he neither adduced evidence nor argued the case before the learned Tribunal.

The claimants in order to establish their case examined claimant no.1, Anjali Chakraborty as PW1 and one Dipankar Sutradhar as PW2 and also produced documents, which have been marked as **Exhibits 1** to **9** respectively.

The Insurance Company did not adduce any evidence in support of his case.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.14,26,696/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the Insurance Company as well as the claimants has preferred appeals being FMA 8 of 2023 and FMA 9 of 2023 respectively.

Both aforesaid appeals are taken up together for consideration.

Ms. Supriya Singh, learned Advocate for the Insurance Company in pursuance of its appeal being FMA 8 of 2023 submits that the victim, Anjan Chakraborty on the fateful day has contributed to the accident and, therefore, the claimants are not entitled to receive compensation. She also indicates that there are no independent witnesses in support of the case of the claimants so far as establishing the manner in which the accident has taken place. PW2 is an interested witness whose evidence is full of conjectures and surmises and therefore cannot be accepted. In view of her above submissions, she prays for setting aside the judgment and award of the learned Tribunal.

Mr. Subir Banerjee, learned Advocate appearing for the claimants in appeal being FMA 9 of 2023 submits that from the materials on record, it is palpable that the motorcycle on which the victim was travelling on the fateful day was dashed from behind. Therefore, the question of contributory negligence does not and cannot arise at all. So far as the quantum of compensation is concerned, he submits that the learned Tribunal has failed to grant compensation of 50% of the annual income of the victim towards future prospect and interest on the compensation amount from the date filing of the claim application till realisation. He, in his usual fairness, submits that since at the time of accident, the victim was 29 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 erred in granting Rs.40,000/- towards loss of consortium since the claimants are mother and dependant sister. 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. In light of his aforesaid submission, he prays for enhancement of the compensation amount.

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

(i) Whether the victim contributed to the accident or not?

(ii) Whether the claimants are entitled to future prospect of 50% of the annual income of the victim?

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

(iv) Whether the claimants are entitled to general damages of Rs.30,000/- only together with escalation of 20%?

(v) 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 the first issue as to whether the victim contributed to the accident or not, at the outset, it would be apposite to examine the contention made in the written complaint **(Exhibit 2)**. On perusal of the written complaint **(Exhibit 2)** it is found that on the date of accident, the motorcycle on which the victim and his friend was travelling was dashed by another motorcycle, which is the offending vehicle, from behind and the accident took place due to rash and negligent driving of the offending vehicle. Furthermore on completion of investigation charge-sheet **(Exhibit 4)** has been submitted against the driver of the offending vehicle under Section 279/338/304A of the Indian Penal Code. PW2, Dipankar Sutradhar, who has been examined on behalf of the claimants as an eye-witness, also deposed in his evidence that the offending vehicle dashed the motorcycle on which the victim and his friend were travelling from backside in a rash and negligent manner. Such evidence of PW2 has remained unrebutted and unchallenged in cross-examination. Therefore, from the above materials on record, it manifest that on the date of accident, the offending vehicle hit the motorcycle on which the victim and his friend was travelling from behind in a rash and negligent manner and there was no head-on-collision of two vehicles. Learned Advocate for the Insurance Company tried to impress upon the Court that there was contributory negligence on the part of the victim. It is relevant to note on going through the written statement that the insurance company in its defence did not take any specific plea of contributory negligence of the deceased-victim in the accident. Thus no such case of contributory negligence has been made out by the Insurance Company in its written statement. That apart, no evidence, either of the driver of the offending vehicle or of any eye witness to the occurrence has been led by the Insurance Company, in support of its contention of contributory negligence of the deceased-victim. Further in the cases relating to motor accident claims, the claimants are merely to establish their case on the touchstone of preponderance of probabilities [***See Kusumlata and Others versus Satbir and others*** reported in ***2011 (2) T.A.C. 1 (SC)***]. Therefore, as the materials on record do not probabilise contributory negligence of the victim, hence the same is inconsequential in the facts and circumstances of the case. Contributory negligence only means the failure by a person to use reasonable care for safety of either himself or his property, so that he become blameworthy in part as an author of his own wrong. In the absence of any evidence to show any wrongful act or omission on the part of the deceased-victim which have contributed either to the accident or to the nature of injuries sustained, the victim cannot be held guilty of contributory negligence.***[(See Mohammed Siddique & Another versus National Insurance Company Limited & Ors*** reported in ***I (2020) ACC 345 (SC)].*** Taking into account the entire facts and circumstances and the evidence as aforementioned, it is found that the contention of the Insurance Company that the deceased-victim contributed to the accident is not sustainable.

As regards the second issue as to whether the claimants are entitled to future prospect of 50% of the annual income of the victim, it appears that the learned Tribunal has not granted any compensation towards future prospect. Be that as it may, upon going through the judgment of learned Tribunal, it is found that at the time of accident, the victim was an X-ray technician by profession and was working with Health Max (I) Diagnostic Centre, Subhas Nagar, Maynaguri and he used to earn Rs.15,000/- per month and his monthly salary after deduction of P. Tax, P.F. and E.S.I. was Rs.12,562/-. Such finding of the learned Tribunal has not been challenged by the Insurance Company it its appeal. Therefore, since there were deductions under P. Tax, P.F. and E.S.I. it can be held that the victim was in permanent employment. Admittedly, the victim at the time of accident was 29 years of age. Such being the position, following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to future prospect of 50% of the annual income of the victim.

With regard to the third 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 29 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. Banerjee, learned Advocate for the claimants.

With regard to fourth issue relating to entitlement of general damages, it is found that the learned Tribunal granted general damages under the heads of Loss of Estate, Funeral Expenses and Loss of consortium of Rs.15,000/-, Rs.15,000/- and Rs.40,000/- respectively. Be that as it may, in view of observation of Hon'ble Supreme Court in *Pranay Sethi (supra),* the claimants, being the mother and dependant sister, are only entitled to general damages under the heads of loss of estate and funeral expenses of Rs.15,000/- each and not loss of consortium of Rs.40,000/-. 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.

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:

Calculation of Compensation

Monthly income	Rs.12,562/-
Annual income (Rs.12,562/- x 12)	Rs.1,50,744/-
Add : 50% future prospect	Rs.75,372/-
	Rs.2,26,116/-
Less: 1/2 towards personal and living expenses	Rs.1,13,058/-
	Rs. 1,13,058/-
Multiplier 17 (Rs. 1,13,058/- x 17)	Rs.19,21,986/-
Add: General damages	Rs.30,000/-
Add: 20% enhancement on general damages	Rs.6,000/-
Total	Rs.19,57,986/-

Thus, the claimants are entitled to compensation of Rs.19,57,986/- 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.

It appears that the insurance company has made statutory deposit of Rs.25,000/- with the Registry of this Court vide DD no. 126722 Dated 29.12.2022. Hence, the said amount together with accrued interest be adjusted against the entire amount of compensation and interest thereon.

Accordingly, the Insurance Company is directed to deposit the balance amount of compensation and interest on the entire compensation amount @ 6% p.a.

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 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 in equal proportion, subject to satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal preferred by the claimants being **FMA 9 of 2023** stands allowed. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

The appeal preferred by the Insurance Company being **FMA 8 of 2023** stands dismissed.

All the connected applications in both the appeals, if any, stand disposed of.

Interim orders in both the appeals, 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**.)