

Ct. 31.8
No. 2022
14

1
akb

F.M.A. 1391 of 2013
Niyati Das & Swapan Kumar Das.
-Versus-
The I.C.I.C.I. Lombard
General Insurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mondal

**...For the Appellants/
Claimants**

Mr. Parimal Kumar Pahari

**...For the Respondent No. 1,
ICICI Lombard General
Insurance Co. Ltd.**

On consent of the learned Lawyers appearing for the parties the appeal is taken up for final hearing.

This appeal has been preferred against the judgment and award passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Suri, Birbhum (hereinafter referred to as the learned Tribunal), in MACC No. 197 of 2010. By the impugned judgment dated 8th January 2013, the learned Tribunal directed the respondent No. 1, the ICICI Lombard General Insurance Co. Ltd. to pay compensation of Rs. 1,50,000/- together with interest @ 4% on this amount with effect from the date of filing of the claim application.

Aggrieved by the compensation as awarded by the learned Tribunal, as inadequate compensation, the appellants/claimants in the instant appeal seek for enhancement of the compensation.

The facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act may be adumbrated as under :

On 18th May, 2010 at about 18.00 hours a Truck bearing No. WB-37A/9617 was coming rashly and

negligently from the side of Rampurhat and it was proceeding towards Suri. At Panagarh – Moregram Highway, while Dipak Das, son of Swapan Kumar Das of ‘Benepukur Para’, Suri, P.S. Suri, Birbhum, was there, then the aforesaid truck dashed him with a great force. As a result of which he sustained serious injuries on his person. He was firstly taken to Suri Sadar Hospital for medical treatment and thereafter he was shifted to Chittoranjan Advanced Referral Institute’ at Burdwan for better treatment. Therefrom, he was shifted to SSKM Hospital, Kolkata where he died on 2nd August 2010. The victim died at the age of 21 years. He was a cloth-merchant and used to earn Rs. 8,500/- per month.

On the allegations of rash and negligent driving on the part of the driver of the offending vehicle an FIR was lodged at the Suri Police Station and the FIR was registered as Suri Police Station Case No. 132 dated 23.5.2010 under Sections 279/337/338/427 of the Indian Penal Code and on the death of the victim Section 304A of the Indian Penal Code was added to the case.

At the time of accident, the offending vehicle was insured with the respondent No. 1, ICICI Lombard General Insurance Company Ltd.

Owing to sudden and untimely demise of the victim, the claimants, Niyati Das and Swapan Kumar Das, who happen to be his parents fell in acute financial crisis. On the facts as above, the claimants sought for compensation of Rs. 8 lakhs with interest thereon.

Upon hearing the learned Lawyers appearing for the parties and on consideration of the evidence on record, the learned Tribunal partly allowed the claim application and awarded the compensation as indicated above.

No appeal or cross objection has been preferred by the Insurance Company challenging the findings recorded by the learned Tribunal. That being so, the findings as recorded by the learned Tribunal remain uncontroverted. The uncontroverted findings of the learned Tribunal show that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim died because of the accident. However, on analyzing the evidence as available in the paper book I do not find any reason to depart from the findings of the learned Tribunal. Therefore, it stands proved that due to rashness and negligence on the part of the driver of the offending vehicle the accident took place and the deceased lost his life because of the accident.

It is not in dispute that the victim died unmarried at the age of 21 years leaving behind him the claimants as his parents and legal heirs.

As it appears from the impugned judgment, the learned Tribunal has inferred that in the absence of any documentary evidence, the yearly income of the deceased will notionally be held at Rs. 15,000/-.

Learned Lawyer appearing for the appellants by referring to the income tax return (Ext. 7) of the deceased submits that the learned tribunal did not consider the income tax return submitted by the deceased and accordingly

the learned Tribunal erroneously held that the income of the deceased was Rs. 15,000/- annually. Based on the income tax return, learned Lawyer submits that monthly income of the deceased should be assessed at Rs. 4,000/- per month. As to this, learned Lawyer appearing for the Insurance Company has not raised any objection. Therefore, on consideration of the income tax return, this Court may without any hesitation in mind, hold that the monthly income of the deceased should be assessed at Rs. 4,000/- per month.

As it appears from the impugned judgment, the learned Tribunal did not calculate any compensation on the count of future prospects of the deceased. The deceased was a self-employed person and he died at the age of 21 years. As observed by the Hon'ble Apex Court at paragraph 59.4 in the case of *National Insurance Company Limited -Vs.- Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680, in the case 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. In view of this decision, future prospects @ 40% of the income should be added while calculating the compensation.

The learned Tribunal made the deduction to the extent of 1/3rd. But, since the deceased died unmarried, deduction will be to the extent of 50% in view of the decision in the case of *Sarla Verma & Ors. -Vs.- Delhi Transport Corporation & Anr.*, reported in (2009) 6 SCC 121. Admittedly, the deceased died at the age of 21 years. In view of the decision in the case of *Sarla Verma (Supra)*, multiplier 18 will be adopted instead of 15 as wrongly adopted by the learned Tribunal. The Tribunal added Rs. 2,000/- only towards

funeral expenses to calculate the compensation. But in view of the decision of the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)* reasonable figures on conventional heads, namely, loss of estate to the extent of Rs. 15,000/- and for funeral expenses to the extent of Rs.15,000/- should be added to the compensation amount.

In view of the above, the award passed by the learned Tribunal requires modification in the following manner :-

Monthly income =	Rs. 4,000/-
Annual Income (Rs.4,000 X 12) =	Rs. 48,000/-
Deduction to the extent of 'Half' towards personal and Living Expenses of the deceased (Rs.48,000 – Rs.24,000)	Rs. 24,000/
Future Prospects @ 40% on the aforesaid amount of Rs 24,000/-	<u>Rs. 9,600/-</u>
Total=	Rs. 33,600/-
Adopting multiplier '18' considering the age of the deceased 21 years (18 X Rs.33,600)	Rs. 6,04,800/-
General damages- Loss of Estate(Rs.15,000/-) Funeral Expenses(Rs.15,000/-)	Rs. 30,000/-
Total compensation towards loss of dependency comes to	Rs. 6,34,800/-

Admittedly, the claimants have received the compensation of Rs. 1,52,000/- from the Insurance Company as awarded by the learned Tribunal.

Therefore, the claimants are now entitled to get further sum of Rs. 4,82,800/- as compensation. Besides, the claimants are entitled to get interest @6% per annum on this amount of money.

Accordingly, on modification of the award passed by the learned Tribunal, respondent No. 1, ICICI Lombard General Insurance Company Limited is directed to deposit a further sum of Rs. 4,82,800/- and interest @ 6% per annum on this further awarded amount of Rs. 4,82,800/- from the date of filing of the claim application by way of cheque in favour of the learned Registrar General with his office within six weeks from date.

After the aforesaid awarded amount of money is deposited by the Insurance Company with the learned Registrar General, the learned Registrar General shall release the amount to the claimants/appellants in equal share as expeditiously as possible after being satisfied with their identity.

With the aforesaid direction the appeal and connected application, if any, stand disposed of. No order as to costs.

Let a copy of this order be sent to the learned Tribunal for information.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Rabindranath Samanta, J.)