

28.04.2023
Ct. no.654
Sl. No. 142
ss

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

F.M.A. 312 of 2019
C.A.N. 1 of 2018 (old No. CAN 1293 of 2018)
C.A.N. 2 of 2018 (old No. CAN 4537 of 2018)
C.A.N. 3 of 2019 (old No. CAN 2897 of 2019)

The National Insurance Co. Ltd.

Versus

Mamtaz Sardar @ Momataz Sardar & ors.

With

COT 6 of 2019

Mamtaz Sardar @ Momataz Sardar & Ors.

Versus

The National Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul

... for the appellant-Insurance Co.

Mr. Amit Ranjan Roy

... for the respondents -claimants

This appeal is preferred against the judgment and award dated 6th January, 2018 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 9th Court, Alipore in M.A.C. Case No.16 of 2015 granting compensation of Rs.25,15,164/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

With the consent of both the parties, the cross objection being COT 6 of 2019 is taken up for consideration, treating the same as on day's list.

The brief fact of the case is that on 1st October, 2015 at about 6 p.m. while the victim and two others were standing beside Basanti Road at that time the offending vehicle bearing registration No.WB-19G/0987 (Matador) proceeding in high speed, in a rash and negligent manner dashed the victim and two others, as a

result of which, the victim died on the spot. On account of sudden demise of the victim the claimants being the mother, widow and minor son of the deceased filed application for compensation of Rs.24,00,000/- together with interest under Section 166 of the Motor Vehicles Act.

In order to establish their case, the claimants examined three witnesses and produced documents, which have been marked as **Exhibits 1 to 16**, respectively.

The appellant-insurance company did not adduce any evidence.

The respondent no.4, owner of the offending vehicle, did not contest the claim application and the case was disposed of *ex parte* against him. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation in favour of claimants to the tune of Rs.25,15,164/- together with interest under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the Insurance Company has preferred the present appeal.

The award of the learned Tribunal has also been challenged by the respondents-claimants by way of filing cross objection being COT 6 of 2019.

Both the appeal and the cross objection are taken up together for consideration and disposal.

Mr. Sanjay Paul, learned Advocate for the appellant-Insurance submits that the learned Tribunal erred in considering the income tax return of the deceased for the Assessment Year 2014-15 being **Exhibit 15** since the same was filed after the death of the deceased. He further submits that the income tax return for Assessment Year 2013-14, which was filed prior to the death of the victim should be taken into consideration for determining the income of the deceased. He also submits that since at the time of accident the deceased was 27 years of age, hence following the observation of the Hon'ble Supreme Court passed in ***Sarla Verma and Others versus Delhi Transport Corporation Ltd. & Another*** reported in **2009 ACJ 1298**, the multiplier should be 17 instead of 18. Further, he submits that the general damages under the conventional head should be Rs.70,000/- instead of Rs.1,27,500/- as granted by the learned Tribunal in view of the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **2017 ACJ 2700**. In view of the above submission he

prays for modification of the impugned award passed by the learned Tribunal.

Mr. Amit Ranjan Roy, learned Advocate for the respondents-claimants submits that since the deceased at the time of accident was self-employed and was aged about 27 years, following the observation of the Hon'ble Supreme Court in *Pranay Sethi's case (supra)* the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased. He further submits that the claimants are also entitled to escalation of 10% on the general damages since three years have already elapsed. He submits for enhancement of the compensation amount.

Having heard the learned Advocate for the respective parties, it is found that following issues are raised in the present appeal and cross objection.

Firstly, whether the learned Tribunal erred in determining the income of the deceased; *secondly*, whether the learned Tribunal ought to have applied multiplier of 17 instead of 18 for assessment of compensation amount; *thirdly*, whether the claimants are entitled to general damages of Rs.70,000/- instead of Rs.1,27,500/- with escalation of 10%; *fourthly*, whether the claimants are entitled to future prospect of 40% of the annual income of the deceased.

With regard to determination of income of the deceased it is found that the learned Tribunal relying on income tax return of the deceased for Assessment Years 2013-14, 2014-15 and 2015-16 determined the income of the victim at the rate of 16,581/- per month.

Be that as it may, the Hon'ble Supreme Court in ***Sangita Arya and Others versus Oriental Insurance Company Limited and Others*** reported in **(2020) 5 SCC 327** considered the income tax returns for assessment years filed prior to the death of the deceased for determining the income of the deceased-victim. Further in another decision passed in ***V. Subbulakshmi and Others versus S. Lakshmi and another*** reported **(2008) 4 SCC 224**, the Hon'ble Supreme Court endorsed the view of the High Court in not relying on the income tax return filed after the accident. Thus, the income for the assessment year 2013-14 which was filed on 06.12.2013, prior to the death, is to be taken into consideration. As per the Assessment Year 2013-14, the total income of the deceased is Rs.1,92,540/- and the tax paid is 'nil'. Therefore, the actual annual income of the deceased comes to Rs.1,92,540/-.

With regard to multiplier, admittedly, the deceased at the time of accident was 27 years of age. Hence, following the observation of the Hon'ble Supreme Court in

Sarla Verma's case (supra) the multiplier should be 17 instead of 18.

So far as general damages are concerned, it is found that the learned Tribunal has granted Rs.1,27,500/-. However, following the decision of the Hon'ble Supreme Court in *Pranay Sethi's case (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium, and funeral expenses to the tune of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively. Since three years have elapsed the claimants are also entitled to escalation of 10% on the general damages.

With regard to future prospect since the victim at the time of accident was self-employed and was 27 years of age an amount equivalent to 40% of the annual income of the deceased should be granted towards future prospect following the observation of the Hon'ble Supreme Court in *Pranay Sethi's case (supra)*.

The other factors have not been challenged in this appeal or cross objection.

Bearing in mind the above, the calculation of compensation is made hereunder:

Calculation of Compensation

Annual Income be assessed as Rs.1,92,540/-

Add: Future prospect @ 40%
of annual income of victim Rs.77,016/-
Rs.2,69,556/-

Less : Personal expenses (1/3rd) Rs.89,852/-

		Rs.1,79,704/-
Multiplier '17'		
(Rs.1,79,704/- X 17)		Rs.30,54,968/-
Add : General damages	Rs.70,000/-	
Loss of estate : Rs.15,000/-		
Loss of consortium: Rs.40,000/-		
Funeral expenses : Rs.15,000/-		
Add : 10% escalation on		
general damages	Rs.7,000/-	
Total :		Rs.31,31,968/-

Thus, the total compensation amount comes to Rs.31,31,968/-.

Mr. Sanjay Paul, learned Advocate for the appellant-Insurance Company submits that the interest on the compensation amount should be scaled down to 6% per annum keeping in mind the existing bank rate of interest.

In view of such submission, the compensation amount of Rs.31,31,968/- shall carry interest @ 6% per annum from the date of filing of the claim application (i.e. on 3.12.2015) till payment.

The respondents-claimants are directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

It is found that the Insurance Company has already deposited an amount of Rs.25,000/- towards statutory deposit vide OD Chalan No.3342 dated 16.3.2018 and has also deposited an amount of Rs.29,80,868/- vide OD Chalan No. 480 dated 7.6.2018 in terms of order of this Court dated 10th May, 2018 before the registry of this Court. Both the aforesaid deposits together with accrued

interest be adjusted against the entire awarded sum and the interest.

Learned Registrar General, High Court, Calcutta shall release the aforesaid amount already deposited with accrued interest in favour of the claimants-respondents, after making payment of Rs.40,000/- towards loss of consortium in favour of respondent no.2, widow of the deceased, in the proportion as granted by the learned Tribunal upon satisfaction of their identity and payment of *ad valorem* court fees on the compensation assessed, if not already paid.

Respondent no.2 being the mother and natural guardian of minor respondent no.3, shall receive the share of the minor and shall keep the share of the minor in a fixed deposit scheme of any nationalised bank or post office until attainment of the majority of the said minor.

The respondents-claimants are directed to intimate the balance amount, if any, to which the claimants will be entitled, after withdrawal of the amount, to the Insurance Company and the Insurance Company on getting such intimation shall deposit the same before the Registrar General of this Court by way of cheque within a period of four weeks and the learned Registrar General upon receipt the same, shall disburse the same upon the claimants in the same proportion as indicated above.

With the above observations, the instant appeal and the cross objection stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)