(2018) 07 CAL CK 0161

In the Calcutta High Court

Case No : C.A.N. 10731 of 2016, F.M.A. 406 of 2017

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Most. Kulsona Bibi & Ors. RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Constitution of India 1950 — Article 141

Citation : (2018) 07 CAL CK 0161

Hon'ble Judges : RAJARSHI BHARADWAJ, J;DIPANKAR DATTA, J

Bench : Single Bench

Advocate : Rajesh Singh, Jayanta Kumar Mondal

Final Decision : Disposed Off

Judgement

,,

RAJARSHI BHARADWAJ, J.",,

1. A road accident on January 26, 2013 at about 7.30 p.m. involving the use of a motor vehicle resulted in the death of Reyajul Islam, a mason and",,

mosaic mistri by profession, aged about 36 years (hereafter the â??victimâ??). The Motor Accident Claims Tribunal, Paschim Medinipur was",,

approached by the heirs of the victim viz. his widow and three children and mother (hereafter the â??claimantsâ??) with an application under section,,

166 of the Motor Vehicles Act, 1988 (hereafter the â??Actâ??). The application was registered as M.A.C. Case No. 103 of 2013. It was claimed in",,

the application that because of rash and negligent driving by the driver of the offending vehicle, i.e. one Mahindra Max vehicle bearing no. WB â?"",,

30K/7113, which was running at a very high speed, dashed Reyajul Islam. He fell down on the road being severely injured. The victim was transferred",, to Ghatal S. D. Hospital and then to P. G. Hospital, Kolkata, where after examination, the attending doctor declared him dead. According to the",,

claimants, as a mason, the victim earned Rs. 7,500/- per month and an amount of Rs. 7,50,000/- was claimed on account of compensation together",,

with interest.,,

2. Upon consideration of the oral and documentary evidence that were led, an award dated 17th December, 2015 was passed by the tribunal. It",,

recorded a finding that the victim was indeed dashed by the offending vehicle which was being driven in a rash and negligent manner, sustained",,

multiple injuries on his person and ultimately succumbed to such injuries. The learned Tribunal after considering all relevant materials and evidences,,

concluded that the monthly income of the victim should be Rs. 4,000/-. Relying on the decision of the Supreme Court in Rajesh and others Vs. Rajbir",,

Singh and others : 2013 (3) TAC 697 (SC) and thereby selecting 50% as future prospect income and 16 (sixteen) as the multiplier, the tribunal",,

awarded Rs. 10,39,000/- as compensation together with interest @ 6 % per annum from the date of filing of the claim application till payment. The",,

said award is the subject matter of challenge in this appeal under section 173 of the Act at the instance of the insurer of the offending vehicle.,,

3. The finding of the tribunal of rash and negligent driving of the offending vehicle being the cause of the accident that took away the victimâ??s life,,

and that it was covered by a policy of the appellant, are not challenged in this appeal; hence the evidence and the finding need not be examined.",,

4. The two points that have been urged in support of the appeal by Mr. Singh, learned advocate for the appellant are these. First, it is contended by",,

Mr. Singh that the tribunal erred in selecting 50% for calculating future prospect instead of 40% in line with the decision of the Supreme Court in,,

National Insurance Company Limited Vs. Pranay Sethi and others : 2017 (4) T.A.C. 673 (S.C.).,,

5. Mr. Singh also contended that compensation on account of loss of estate, loss of consortium and funeral expenses cannot be fixed arbitrarily by the",,

learned tribunal.,,

6. The Constitution Bench of the Supreme Court in Pranay Sethi & Ors. (supra) has, inter alia, laid down in paragraph 61 as follows:-",,

â??61. In view of the aforesaid analysis, we proceed to record our conclusions:-",,

(i) ************************,,

(ii) ***********************,,

(iii) While determining the income, an addition of 50% of actualsalary to the income of the deceased towards future prospects, where the deceased",,

had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to",,

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less",,

tax.,,

(iv) Incase, the 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. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the,,

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the,,

income minus the tax component.,,

(v) ***********************,,

(vi). ***********************,,

(vii) ***********************,,

(viii) Reasonable figures on conventional heads, namely, loss ofestate, loss of consortium and funeral expenses should be 15,000/-, 40,000/- and",,

15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??",,

7. Mr. Jayanta Kumar Mondal, learned Advocate appeared for the claimants He prayed that compensation payable to them may be determined in",,

accordance with the dictum of the Supreme Court in the aforesaid decision.,,

8. We are in complete agreement with Mr. Singh, learned advocate for the appellant that in terms of the decision in Pranay Sethi (supra), the",,

determination of compensation payable to the claimants has to be revisited. The award was rendered on 17th December, 2015, when the decision in",,

Rajesh and others (supra) was the law having the effect of a binding precedent under Article 141 of the Constitution. Since in rendering the award the,,

learned tribunal followed the decision in Rajesh (supra), it may not have required interdiction at our end but for the decision in Pranay Sethi (supra),",, delivered in late October, 2017, declaring that the decision in Rajesh (supra) is not good law. Therefore, while the learned tribunal cannot be faulted,",,

we are required to re-determine the compensation payable to the claimants selecting 40% as the appropriate future prospects index since the victim,,

was 36 years of age on the date of his unfortunate death.,,

9. The claimants would obviously stand to lose, because of selection of 40% instead of 50% on account of future prospect; however, we are of the",,

view that having regard to the number of dependants left behind by the victim, 1/5th and not 1/3rd, as deducted by the tribunal, should be deducted for",,

the personal and living expenses of the victim.,,

Thus, we proceed to re-determine compensation payable to the claimants in the light of paragraph 61 (iv) and (viii) of the decision in Pranay Sethi",,

(supra) as well as the factor mentioned in the preceding paragraph in the manner as follows:,,

Sl. No.,Heads,Calculation

(i),"Monthly income of the

deceased","Rs. 4,000/-

(ii),"Increasing 40% as future

prospect income","Â Rs.(4,000 + 1600)

Â = Rs. 5,600/-

(iii),"Yearly Income after deduction

of 1/5th on

account of the victimâ??s

personal and living expenses","Â Rs.(67,200 â?"13440)

Â = Rs. 53,760/-

(iv),"Compensation after multiplier of

16 is applied","Â Rs. (53,760 x 16) = Rs.

8,60,160/-

(v),Loss of estate,"Â Rs. 16,500/-

(vi),Loss of consortium,"Â Rs. 44,000/-

(vii),Funeral expenses,"Â Rs. 16,500/-

,"Total Compensation Awardable

(iv+v+vi+vii)","Â Rs. 9,37,160/-