(2022) 09 CAL CK 0061

In the Calcutta High Court

Case No : F.M.A No. 279 Of 2009, FMAT No. 618 Of 2008

Debojyoti Datta APPELLANT

Vs

M/S. Oriental Insurance Company Ltd. & Ors. RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Indian Penal Code, 1860 — Section 279, 304A, 337, 338, 427

Citation : (2022) 09 CAL CK 0061

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Ashique Mondal, Arup Kumar Bag, Afroze Alam, Arup Kumar Bag, Sanjoy Paul

Final Decision : Disposed Of

Judgement

Bibhas Ranjan De, J

Re . FMA No. 279 of 2009

1. This appeal has been preferred against judgment passed in MJC No. 284 of 2005 passed by Ld. Judge, 10th Bench, City Civil Court at Calcutta allowing the award to the tune of Rs. 10,000,00/- and direction for apportionment for compensation between the respondent no.1 Oriental Insurance Company and respondent no. 2 National Insurance Company.

2. By this appeal claimant/appellant prayed for enhancement of the awarded amount.

3. On 21.05.2005 at about 00.00 hours one truck, bearing Reg. No. WB-25-9952, was plying through National Highway No. 34 with a very high speed and in rush and negligent manner and all of a sudden pushed its break and stopped the vehicle. At that time, one Qualis Car, bearing Reg. No. WB-02T4430, plying on the same road following the truck, dashed the truck. At the same time, one Bolero Car bearing Reg. No. WB-60-9313 coming with high

speed following that Qualish Car, could not control its speed and smashed the said Qualish Car, where husband (since deceased) of the claimants No. 1was travelling from Siliguri to Calcutta along with others. The said accident took place within the jurisdiction of Police Station, Karamdighi where a Police Case No. 79/2005 dated 21.05.2005 was started.

4. Accordingly, claimant prayed for compensation to the tune of Rs. 27,00,000/- from the National Insurance Company who insured the truck bearing Reg. No. WB-25-9952 as well as Oriental Insurance Company insurer of Bolero vehicle bearing Reg. No. WB-60-9313. The National Insurance Company and Oriental Insurance Company contested the case by filling their respective written statement denying all material allegations made in the claim application.

5. Ld. Tribunal framed issues and took up the claim petition for trial. Three witnesses were examined in this case and several documents were admitted in evidence.

6. Ld. Tribunal after considering all the facts and circumstances, including the evidence recorded thereon came to his findings that claimant was entitled to the tune of Rs. 10,00,000/-and both the Insurance Company i.e. National Insurance Company and Oriental Insurance Company Ltd. were held equally responsible to clear up the compensation amount by issuing cheques in the name of claimants.

Re. FMAT NO.618 of 2008

7. This is an appeal filed on behalf of the Oriental Insurance Company Limited, challenging the judgment and order dated 05.03.2008 passed by Learned Judge, 10th Bench, City Civil Court at Calcutta in M.J.C No. 284 of 2005, under Section 166 of the Motor Vehicles Act, whereby a direction for apportionment of compensation between the appellant (Oriental Insurance Company Ltd.) and respondent no. 4 (National Insurance Company Ltd.) was given.

8. In fact, main ground of the appeal is that the order for apportionment of compensation between Oriental Insurance Company Ltd. and National Insurance Company Ltd., was bad in law as the accident took place only due to negligent act on the part of the driver of truck.

Decision:-

9. Ld. Advocate appearing on behalf of the Oriental Insurance Company, concentrated his argument only in terms of the manner of accident alleged to have been taken place on 21.05.2005 at about 00.00 hours. Ld. Advocate has tried to make this Court understand that entire accident took place involving three vehicles only due to sudden break of the truck running with high speed that too on the National Highway No. 34. Therefore, according to Ld. Advocate insurer of that truck i.e. National Insurance Company is only responsible for the entire claim amount.

10. Ld. Counsel, appearing on behalf of the claimant only argued on the issue of

enhancement of compensation. In support of his contention, he relied on the case of Smt. Sarla Verma and other vs. Delhi Transport Corporation & another (2009) 6 SCC 121 on the point of deduction from gross salary and the case of New Indian Assurance Company Ltd. Vs. Smt. Somwati and others (2020) 9 SCC 644 on the point of general damages including consortium.

11. After careful scanning of entire evidence on record including Police reports (FIR, Seizure List & Charge sheet) I find that one truck was running through National Highway No. 34 with high speed followed by two vehicles i.e. one Qualsih Car and one Bolero Car. All of a sudden, the truck moving with high speed pushed its break, presumably emergency break, and as a natural consequence both the cars namely Qualis and Bolero moving with high speed on National Highway rammed into the truck. Therefore, by no stretch of imagination, I can come to any conclusion that the following vehicles i.e. Qualis Car and Bolero Car are responsible for that unfortunate accident happened on 21.05.2005 at midnight, that too on a National Highway. Naturally, Police started a case being Karamdighi Police Station Case No. 79/2005 dated 21.05.2005 under Section 279/337/338/304A/427 of the Indian Penal Code and in that case charge sheet was submitted against only the driver of the truck who was responsible for the accident.

12. Therefore, insurer of the truck i.e National Insurance Company is only responsible to pay entire compensation to the claimants.

Computation of Compensation:-

13. Before entering into this issue it would appropriate to refer to the relevant observation of the Hon'ble Apex Court in the following two landmark judgements:-

Smt. Sarla Verma and other vs. Delhi Transport Corporation & another (2009) 6 SCC 121.

National Insurance Company Ltd. Vs. Pranay Sethy and others (2017) 16 SCC 680.

14. In Sarla Verma (supra) it is observed as follows:-

"21.We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M- 11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. Pranay Sethy (supra) viewed as follows:-

"60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self- employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

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

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary 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) In case 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) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

16. Therefore, I propose to calculate the compensation, obviously, in terms of observation of the Hon’ble Apex Court in the aforesaid two landmark judgments as well as the judgment relied upon from the side of the claimant.

17. From the evidence, it is seen that deceased was aged about 54 years and an employee of Directorate of Enforcement, Government of India, at the time of accident. PW-3 came before the Court and deposed that he issued the salary certificate (exhibit-11) in favour of the deceased for the month of April, 2005 and he used to earn gross salary of Rs. 22,199/-according to salary certificate. From the calculation of pay by the employer of the deceased it is found that after deduction towards tax monthly income of the deceased remained Rs. 20,269/-.

18. In terms of monthly income I propose to calculate the entire compensation as follows:-

Monthly Income

:20,269/-

Less 1/3rd personal expenses (Rs. 6,756/-)

13,513/-

Add:- Future Prospects (15%)

15,539/-

Annual Income (15,539 x 12)

1,86,468/-

Multiplier (x11)

20,51,148/-

Add:- Loss of consortium (Spousal & Parental)

80,000/-

Add:- Loss of estate

15,000/-

Add:- Funeral expenses

15,000/-

Total

21,61,148/-

19. National Insurance Company is directed to deposit the entire amount before the Ld. Registrar General after deducting the amount already paid to the claimant along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of balance amount, within six (6) weeks from date.

20. National Insurance Company is also directed to deposit the amount, already paid by the Oriental Insurance Company, before the Ld. Registrar General towards reimbursement to the Oriental Insurance Company, within six (6) weeks from date.

21. Claimant is entitled to the balance amount of compensation subject to payment of advelorem Court fees on the enhanced amount.

22. Ld. Registrar General will disburse the amount in favour of the claimant on proper identification and also on verification of payment of Court fees on the enhanced compensation.

23. Oriental Insurance Company is at liberty to withdraw the amount deposited by the National Insurance Company towards reimbursement, in connection with this appeal.

24. Let the records of the Tribunal be sent back immediately.

25. F.M.A 279 of 2011 & FMAT 618 of 2008 stand disposed of without any order as to cost.

26. All pending applications, if any, stand disposed of accordingly.

27. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

