
(2022) 06 CAL CK 0070
In the Calcutta High Court
Case No : FMAT No. 910 Of 2017

National Insurance Company Limited

APPELLANT

Vs

Kalyani Garai

RESPONDENT

Date of Decision : 27-06-2022

Acts Referred:

Citation : (2022) 06 CAL CK 0070

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : Afroze Alam, Amit Ranjan Roy

Final Decision : Dismissed

Judgement

Rabindranath Samanta, J

1. This appeal has been preferred by the appellant National Insurance Company Limited against the judgment and award passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court – II, Asansol, Paschim Bardhaman in MAC No. 38 of 2011 renumbered as MAC No. 07 of 2012. By the award the learned Motor Accidents Claim Tribunal (hereinafter be referred to as the Tribunal) directed the appellant to pay a sum of Rs.12,52,792/- with interest at the rate of 8% per annum from the date of filing of the claim application till realization of the amount from the appellant.

2. The facts which led the filing of the claim-application may be summarised as under:-

On 21.12.2010 at about 5:30 P.M. the victim Naran Garai alias Narayan Garai alias Narayan Chandra Gorai was returning to his house at village Amdiha with others from Raniganj by his ambassador car bearing No. WB-38/R-8629. While the car in which he was travelling was on N.H.-2 near Kalla Bye-pass, then one truck bearing No. BR-24/G-0574 suddenly dashed the ambassador car. The driver of the truck was driving the truck in rash and negligent manner and as a result of

which the accident took place. Because of the accident the victim and other co-passengers of the vehicle suffered injuries all over their body. The local people shifted them to Sub-Divisional Hospital, Asansol for their treatment, but the condition of the victim was critical and at the advice of the attending doctor the victim was shifted to the Mission Hospital, Durgapur then and then. But, after prolonged treatment the victim died at the hospital fourteen days after the accident.

3. The respondent No.1 Smt. Kalyani Garai is the widow of the victim and the respondent Nos. 2 and 3 Karunamoy Garai and Binay Krishna Garai are the sons of him. Owing to the sudden death of the victim who was the sole bread earner, his widow and sons fell in immense financial distress.

4. At the time of his death the victim used to earn Rs. 1,57,090/- per annum carrying on business of transportation. At the time of his death he was aged about 58 years.

5. Under the aforesaid circumstances, the respondent Nos. 1 to 3 being the legal heirs of the deceased sought for compensation of Rs. 12,00,000/- plus interest.

6. As it appears from the case record, despite service of notice upon him, the respondent No.4 Kalisadhan Goswami, the owner of the offending vehicle did not turn up before the learned Tribunal to contest the case and as such the case proceeded ex parte against him.

7. However, the appellant Insurance Company contested the case by filing a written objection wherein it denied the averments as made in the claim application and sought for dismissal of the application.

8. Upon the pleadings of the parties the learned Tribunal framed issues for adjudication of the matter.

9. As it appears, the claimants/respondent Nos. 1 to 3 in order to establish their case examined as many as eight witnesses. Besides, some documents relied upon by them were marked as Exhibited documents.

10. Upon hearing the learned Advocates appearing for the parties and on consideration of the oral and documentary evidence the learned Tribunal passed the award as above.

11. Mr. Afroze Alam, learned counsel appearing for the appellant submits that the learned Tribunal erred in passing the award and wrongly directed the appellant to pay the compensation of Rs.12,52,792/- without recording any finding that the owner of the offending vehicle was responsible for paying the compensation as the driver of the offending vehicle at the time of driving did not possess any valid driving licence. Learned Counsel argues that ordinarily this Court awards 6% interest on the awarded amount, but the learned Tribunal erroneously directed the appellant to pay interest at the rate of 8% per annum. Learned Counsel points out that the claimants have asserted that the victim was a businessman of

transportation, but the learned Tribunal has penned is his judgment that the deceased was an unskilled labourer and as such the learned Tribunal proceeded wrongly to calculate the compensation on such statement. On such score learned Counsel submits that the judgment and award passed by the learned Tribunal is liable to be set aside.

12. Per contra, Mr. Amit Ranjan Roy, learned counsel appearing for the respondent Nos. 1 to 3 submits that the burden was on the Insurance Company to establish their defence that the driver of the offending vehicle had no valid licence to drive the vehicle and this onus cannot be shifted on the claimants. Learned Counsel submits that the learned Tribunal passed the award after considering the evidence on record and applying the legal principles propounded by the Hon'ble Apex Court in some recent decisions.

13. Perusal of the judgment of the learned Tribunal shows that the claimants have been able to prove that due to rash and negligent driving of the offending truck being No. BR-24/G-0574 the accident took place.

14. Amongst the witnesses examined on behalf of the respondent Nos. 1 to 3/ claimants I find that P.W. 5 Asim Ganguly was the driver of the Ambassador being No. WB-38/R-8629, P.W. 2 Paresh Gorai and P.W. 6 Ashis Ghosh were the eye-witnesses to the accident. It is in the evidence of P.W. 5 that he was driving the aforesaid Ambassador on 21.12.2010. At about 5:30 P.M. while he was driving the vehicle on N.H.2 near Kalla Bye-pass, then the offending truck driven in a rash and negligent manner dashed against the ambassador. I find that nothing has been derived from cross-examination of this witness on behalf of the Insurance Company to discredit such evidence of this witness. On the other hand, P.W. 2 Paresh Gorai and P.W. 6 Ashis Ghosh in their evidence convincingly testify that due to rash and negligent driving of the aforesaid offending truck, the truck dashed against the ambassador and caused the accident. Though the learned Tribunal on consideration of the charge-sheet and other evidence recorded the finding that due to rash and negligent driving of the offending truck the accident took place, but the evidence of the eye-witnesses as above unequivocally establish that the accident took place because of the rash and negligent driving of the offending vehicle. Whether the driver of the offending truck had no valid driving licence or not to drive the vehicle, the onus was on the Insurance Company to prove it. But it has failed to discharge its onus to prove that the driver of the offending vehicle did not possess valid driving licence. That being so, the submission advanced by the learned Counsel for the appellant that the learned Tribunal erred in passing the award without recording any finding that the driver of the offending truck had no valid licence is not acceptable.

15. As stated above, learned Counsel for the appellant contends that though the case of the claimants is that the occupation of the victim-deceased was carrying on business of transportation, the learned Tribunal in the impugned judgment awarded compensation for future prospect treating the deceased as the unskilled labourer. Be that as it may, on assessment of relevant evidence on record, I find

that the claimants have established that the victim had a business of transportation. However, it has been held by the learned Tribunal that 10% on the Annual Income will be added as future prospect. Now, it will be considered whether such finding of the learned Tribunal suffers from any illegality or irregularity.

16. The Hon'ble Apex Court in the case of National Insurance Company Limited – Vs- Pranay Sethi and Ors reported in (2017) 16 SCC 680 has held at paragraph 59.4 that 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.

17. As held above, the vocation of the deceased belonged to the category of 'self-employed'. Admittedly, the deceased breathed his last due to the accident at the age of 58 years. In such factual and legal scenario the learned Tribunal was justified in awarding compensation at the rate of 10% on the annual income of the deceased as future prospect.

18. Since the victim died at the age of 58 years multiplier 8 would be employed in terms of the observations of the Hon'ble Apex Court at paragraph 42 of the decision in the case of Sarla Verma and Ors -Vs-Delhi Transport Corporation and Ors reported in (2009) 6 SCC 121. The learned Tribunal, therefore, has rightly used the multiplier 8 to compute the compensation.

19. As it transpires from the medical bills already put in evidence on behalf of the claimants, the claimants had to spend Rs. 2,81,200/- for medical treatment of the victim. This shows that the learned Tribunal was quite justified to come to the inference that the claimants are entitled to Rs.2,81,200/- as medical expenditure spent by them.

20. Though it is not contended, the evidence of P.W. 8 Samir Kumar, an inspector of Income-Tax Department and the Income Tax returns submitted by the victim (Exhibit 13 series) duly proved by P.W. 8 establish the claim of the claimants that the annual income of the deceased was 1,57,090/-.

21. It appears from the impugned judgment that the learned Tribunal awarded Rs. 10,000/- as Funeral Expenses and Rs. 15,000/- as Loss of Estate. But, as mandated by the Hon'ble Apex Court in the judgment reported in (2017) 16 SCC 680 (National Insurance Company Limited –Vs- Pranay Sethi and Ors) compensation on Loss of Estate, Loss of Consortium and Funeral Expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. But, the findings of the learned Tribunal in this regard are not in consonance with the direction of the Hon'ble Apex Court in the decision supra. Since no cross-appeal has been preferred by the respondents/claimants, this Court does not feel it wise

to interfere with such finding of the learned Tribunal in order to enhance the compensation on such counts.

22. The learned Tribunal by the impugned award, inter alia, directed the Insurance Company to pay interest at the rate of 8% per annum from the date of filing of the claim application till realization of the awarded amount. According to Mr. Afroze Alam, learned Counsel for the appellant, awarding interest at the rate of 8% per annum by the learned Tribunal is vitiated with errors as this Court by consistent orders/judgments has been awarding interest at the rate of 6% per annum.

23. In the decisions in the case of National Insurance Company Limited –Vs- Satish Kumar Verma and Anr reported in 2019 (4) T.A.C. 1 (SC) and in the case of Rajesh & Ors –Vs- Rajbir Singh & Ors reported in (2014) 1 WBLR (SC) 23 the Hon'ble Apex Court has awarded interest on the awarded amount at the rate of 9% and 7.5% respectively. In view of such decisions, I think that the discretion exercised by the learned Tribunal in awarding interest at the rate of 8% per annum should not be disturbed.

24. Therefore, I find that the computation of the awarded amount of money as arrived at by the learned Tribunal should not call for any interference by this Court.

25. In view of the above, the appeal merits dismissal and accordingly, the appeal is dismissed on contest against the respondent Nos. 1 to 3 and ex parte against the respondent No. 4.

26. No order as to costs.

27. Connected application, if any, stands disposed of.

28. The respondent Nos.1 to 3 are allowed to withdraw the sum of Rs. 19,91,974/- as deposited by the appellant, National Insurance Company Limited vide challan dated 02.08.2018 as awarded amount of money with interest thereon from the learned Registrar General, High Court, Calcutta. The respondent Nos. 1 to 3 are also permitted to withdraw the further amount of money, if any, payable by the Insurance Company in terms of the award. The Insurance Company is directed to deposit such amount of money , if payable, within three weeks from date.

29. If the respondent Nos.1 to 3 approach, the learned Registrar General shall release the aforeaid awarded amount of money to them as expeditiously as possible.

30. The appellant is permitted to withdraw the statutory deposit of Rs.25,000/- as made by it vide challan dated 05.09.2007.

31. Let a copy of this judgment, be sent to the learned Tribunal for information.

32. Urgent certified website copies of this judgment, if applied for, be given to

the parties upon compliance with all requisite formalities.