(2023) 12 CAL CK 0051

In the Calcutta High Court

Case No : FMA No. 126 Of 2018

New India Assurance Co. Ltd. APPELLANT

Vs

Saraswati Sardar & Anr. RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 163A

Citation : (2023) 12 CAL CK 0051

Hon'ble Judges : Bivas Pattanayak, J

Bench : Single Bench

Advocate : Sanjay Paul, Krishanu Banik

Final Decision : Disposed Of

Judgement

Bivas Pattanayak, J

1. This appeal is preferred against the judgment and award dated 3rd June, 2017 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 4th Court, Alipore, South 24 Parganas in M.A.C. Case No. 56 of 2009 granting compensation of Rs.4,15,000/- together with interest in favour of the claimant under Section 163A of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 18th January, 2009 while the victim, aged about 12 years, was returning home after completing her dance class and when she got down from the bus at Duilya Transformer More, the offending vehicle bearing registration no. WBI-8139 (truck) dashed the victim from behind, as a result of which the victim sustained severe injuries all over her body and succumbed to her injuries soon after the accident. On account of sudden demise of the victim, the claimant being the mother of the victim filed application for compensation of Rs. 3,05,000/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

3. The claimant in order to establish her case examined herself and produced documents which have been marked as Exhibits-1 to 8 respectively.

4. The appellant-insurance company did not adduce any evidence.

5. Although respondent no.2, owner of the offending vehicle entered appearance before the learned Tribunal and filed its written statement, but subsequently did not contest the claim application and the case was disposed of ex parte against it. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

6. Upon considering the materials on record and the evidence adduced on behalf of claimant, the learned Tribunal granted compensation of Rs.4,15,000/- together with interest in favour of the claimant under Section 163A of the Motor Vehicles Act, 1988.

7. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

8. Mr. Sanjay Paul, learned advocate for appellant-insurance company submitted as follows. The learned Tribunal failed to follow the Second Schedule to the Act and determined income of the minor-victim at Rs. 36,000/- per annum whereas it ought to have considered the income of the minor-victim at Rs. 15,000/- per annum. Further the learned Tribunal has erred in granting future prospect in an application under Section 163A of the Act, which is never included in the Second Schedule to the Act. Referring to the decision of Hon'ble Supreme Court in Deepal Girishbhai Soni and Others versus United India Insurance Co. Ltd., Baroda AIR 2004 SC 2107, he submitted that in an application under Section 163A of the Motor Vehicles Act, the Second Schedule is to be strictly followed and the determination of the compensation should be on the basis of structured formula provided in the Second Schedule to the Motor Vehicles Act. Moreover, the learned Tribunal granted exorbitant rate of interest on the amount of compensation which is required to be scaled down. In light of his aforesaid submissions, he prayed for modification of the impugned judgment and award of the learned Tribunal.

9. In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Krishanu Banik, learned advocate for respondent no.1-claimant submitted that the notional income of Rs. 36,000/- per annum as considered by the learned Tribunal is correct in the case of minor victim. To buttress his contention, he relied on the following decisions:

i. Kishan Gopal & Anr. versus Lala & Ors. (2014) 1 SCC 244,

ii. Kurvan Ansari alias Kurvan Ali & Anr. versus Shyam Kishore Murmu & Anr. (2022) 1 SCC 317,

iii. Astabuddin Gazi @ Aftaruddin @ Aptabuddin @ Aarafatab & Anr. versus Pranabananda Mondal & Anr. (F.M.A.T. 1427 of 2015).

10. Mr. Paul, learned advocate for appellant-insurance company, in reply, submitted that the decision of Hon'ble Supreme Court in Kishan Gopal (supra)

and of this court in Astabuddin Gazi (supra) are in respect of an application under Section 166 of the Act and does not apply to the case at hand since the present application is one under 163A of the Act. Further the findings in Kurvan Ansari @ Kurvan Ali (supra) is a departure from principle of law laid down in Deepal Girishbhai Soni (supra).

11. Having heard learned advocates for respective parties and also keeping in mind the Second Schedule to the Act, following issues have fallen for consideration:

i. Whether the learned Tribunal erred in determining the income of minor-victim.

ii. Whether the multiplier of 15 adopted by the learned Tribunal is correct.

iii. Whether the learned Tribunal erred in granting future prospect.

iv. Whether the learned Tribunal erred in granting general damages of Rs. 10,000/-.

v. Whether the learned Tribunal allowed interest on the compensation amount at excessive rate.

12. At the very outset before deciding the points in issue, it would be appropriate to examine as to whether in an application under Section 163A of the Motor Vehicles Act, the Second Schedule to the Act is to be strictly followed and there can be deviation from it. The aforesaid question fell for consideration before the three-Judges Bench of the Hon'ble Supreme Court in Deepal Girishbhai Soni (supra) and the Larger Bench of the Hon'ble Supreme Court in the above decision clearly laid down the proposition that Section 163A of the Act which has an overriding effect, provides for special provisions as to payment of compensation which is required to be determined on the basis of structured formula.

13. Bearing in mind the above observation of the Hon'ble Supreme Court in Deepal Girishbhai Soni (supra), I now proceed to decide the points in issue in this appeal.

Issue No.1: Whether the learned Tribunal erred in determining the income of minor-victim.

14. With regard to the first issue relating to determination of income of the minor-victim, it is found that the learned tribunal determined the income of the minor-victim at Rs. 3,000/- per month meaning thereby Rs.36,000/- per annum. The Second Schedule to the Act provides for notional income of Rs.15,000/- per annum in case of non-earning person. The income of the minor-victim of Rs.36,000/- per annum determined by the learned Tribunal appears to be a deviation from the Structured formula provided in the Second Schedule to the Act. This Hon'ble Court has consistently considered the notional income of Rs. 15,000/- per annum in case of a minor-victim in an application under Section 163A of the Act in Smt. Pato Mondal versus The New India Assurance Company

Limited & Anr. (F.M.A. No. 1805 of 2006) and other appeals and Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi versus National Insurance Company Ltd (F.M.A. No. 407 of 2012). Further the report in respect of Kishan Gopal (supra) and Astabuddin Gazi (supra) (FMAT 1427 of 2015) relates to claim petition under Section 166 of the Motor Vehicles Act, thus the ratio is not applicable to the case at hand since it is filed under Section 163A of the Motor Vehicles Act. The decision rendered by Hon'ble Supreme Court in Kurvan Ansari @ Kurvan Ali (supra) though passed in respect of an application under Section 163A of the Act but has not considered the decision of the Larger Bench of the Hon'ble Supreme Court in Deepal Girishbhai Soni (supra) which clearly holds that determination of compensation in an application under Section 163A of the Act should be made on the basis of structured formula of the Second Schedule to the Motor Vehicles Act. I find substance in the submission of Mr. Paul, learned advocate for appellant-insurance company that findings in Kurvan Ansari @ Kurvan Ali (supra) is a departure from principle of law laid down in Deepal Girishbhai Soni (supra). In view of the above discussion, the notional income of Rs. 15,000/- per annum of the minor-victim should be taken into consideration in an application under Section 163A of the Act.

Issue No.2: Whether the multiplier of 15 adopted by the learned Tribunal is correct.

15. With regard to the second issue relating to multiplier, it is found that the learned Tribunal has adopted the multiplier of 15. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in case of Reshma Kumari and Others versus Madan Mohan and Another (2013) 9 SCC 65 wherein the Hon'ble Supreme Court held as follows:

"43.2. In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed."

Further in paragraph 40 of the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another (2009) 6 SCC 121, it is found that a table has been prepared upon noticing several decisions which is reproduced hereunder for convenience:

"40. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under Section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163-A of MV Act (with appropriate deceleration after 50 years):

Age of the deceased

Multiplier scale as envisaged in Susamma Thomas

Multiplier scale as adopted by Trilok Chandra

Multiplier

scale in Trilok Chandra as clarified in Charlie

Multiplier specified in Second Column in the Table in Second Schedule to the MV Act

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensati on)

(1)

(2)

(3)

(4)

(5)

(6)

Up to 15 yrs

-

-

-

15

20

15 to 20 yrs

16

18

18

16

19

21 to 25 yrs

15

17

18

17

18

26 to 30 yrs

14

16

17

18

17

31 to 35 yrs

13

15

16

17

16

36 to 40 yrs

12

14

15

16

15

41 to 45 yrs

11

13

14

15

14

46 to 50 yrs

10

12

13

13

12

51 to 55 yrs

9

11

11

11

10

56 to 60 yrs

8

10

09

8

8

61 to 65 yrs

6

08

07

5

6

Above 65 yrs

5

05

05

5

5

The header of column (6) reads as "Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)". The aforesaid proposition has also been followed by this Hon'ble Court in catena of decisions. Admittedly the victim is 12 years of age, thus, bearing in mind the aforesaid, the multiplier for a victim of road accident who was aged below 15 years would be 20.

Issue No.3: Whether the learned Tribunal erred in granting future prospect.

16. With regard to the third issue relating to entitlement of future prospect in an

application under Section 163A of the Act, it is found that the learned Tribunal has granted Rs. 1,35,000/- towards future prospect. Needless to mention that Second Schedule to the Act does not provide for future prospect and, therefore, the grant of compensation under future prospect by the learned Tribunal is liable to be set aside.

Issue No.4: Whether the learned Tribunal erred in granting general damages of Rs. 10,000/-.

17. So far as the general damages under the heads of funeral expenses and loss of estate are concerned, it is found that the learned Tribunal has granted Rs. 5,000/- each under such heads. As per Second Schedule to the Act, the compensation under general damages namely loss of estate and funeral expenses should be Rs. 2,500/- and Rs. 2,000/- respectively.

Issue No.5: Whether the learned Tribunal allowed interest on the compensation amount at excessive rate.

18. Coming to the last issue relating to grant of interest on the compensation amount, it is found that the learned Tribunal has allowed interest @ 10% per annum. Be that as it may, bearing in mind the prevailing banking rate of interest, the compensation amount shall carry interest @ 6% per annum from the date of filing of the claim application till the date of realisation.

19. In view of the above discussion, the calculation of compensation is made hereunder:

Notional yearly income

Rs. 15,000/-

Less: 1/3rd on account of personal and living expenses of the victim (Rs.15,000 x 1/3)

Rs. 5,000/-

Rs. 10,000/-

Compensation after multiplier of 20 is applied (Rs. 10,000/- x 20)

Rs. 2,00,000/-

Loss of estate

Rs. 2,500/-

Funeral expenses

Rs. 2,000/-

Total compensation awardable

Rs. 2,04,500/-

20. Thus, the claimant is entitled to compensation of Rs. 2,04,500/-together with interest @ 6% per annum from the date of filing of the claim application till payment.

21. It is found that the appellant-insurance company has deposited an amount of Rs. 7,48,150/- in terms of order of this Court vide OD Challan No. 2250 dated 7th December, 2017 and statutory deposit of Rs. 25,000/-vide OD Challan No. 1530 dated 14th September, 2017 before the registry of this Court. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire compensation amount and the interest thereon.

22. Learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation in favour of respondent no.1-claimant upon satisfaction of her identity.

23. Upon satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the appellant-insurance company.

24. With the above observation, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Let a copy of this judgment be forwarded to the learned Tribunal along with lower court records for information.

28. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.