(2022) 11 CAL CK 0058

In the Calcutta High Court

Case No : FMA No. 891 Of 2022

Nurjahan Khatoon And Others — APPELLANT

Vs

Cholamandalam Ms General Insurance Company Limited & Another — RESPONDENT

Date of Decision : 18-11-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 11 CAL CK 0058

Hon'ble Judges : Bivas Pattanayak, J

Bench : Single Bench

Advocate : Subir Banerjee, Sandip Bandopadhayay, Ruxmini Basu Roy, Soumalya Ganguli

Final Decision : Disposed Of

Judgement

Bivas Pattanayak, J

1.The present appeal is directed against the judgment and award dated 11 February 2021 passed by learned Additional District Judge, Fast Track, 1st Court cum Judge, Motor Accident Claims Tribunal, Islampur, Uttar Dinajpur in M.A.C Case no. 69 of 2019 under Section 166 of Motor Vehicles Act, 1988 granting compensation in favour of the claimants to the tune of Rs.5,95,000/-alongwith interest.

2. The factual matrix of the case is that on 20 March 2019 at about 6 AM the deceased-victim was travelling in the offending vehicle bearing no.AS-01-GC/8844 (truck) as a Khalasi which was proceeding towards Islampur from Chakulia and when the offending vehicle(truck) reached near Bihar More, Goalpukur the driver who was driving the offending vehicle at a high speed and in negligent manner lost control over the vehicle and it capsized beside the road. As a result the deceased-victim (Khalasi) sustained grievous injuries and succumbed to death. On account of sudden demise of the deceased-victim in the

said accident, the claimants being the wife and children of the deceased filed application claiming compensation of Rs.11,00,000/- alongwith interest.

3. The respondent no.1-insurance company contested the claim application before the learned tribunal. However respondent no.2-owner of the offending vehicle though filed written statement but subsequently did not contest the claim application before the learned tribunal and the claim application was disposed of exparte against him. By order dated 17.08.2022 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with for the aforesaid reasons.

4. The claimants in order to prove their case examined two witnesses including claimant no.1, wife of the deceased and one other and also produced documentary evidence which are marked as Exhibit 1 to 11 respectively. The contesting opposite party no.2-insurance company (respondent no.1 herein) did not adduce any evidence.

5. Upon considering the materials on record as well as the oral and documentary evidence produced on behalf of the claimants, the learned tribunal granted compensation in favour of the claimants to the tune of Rs. 5,95,000/-alongwith interest.

6. Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

7. Mr Subir Banerjee, learned advocate for the appellants-claimants submitted that the present appeal has been preferred by the claimants on the sole ground that the learned tribunal failed to accept and consider the monthly income of the deceased-victim amounting to Rs. 8,000/-, which is evident from the salary certificate of the deceased-victim issued by his employer namely the owner of the offending truck and erred in holding that the claimants failed to prove the income of the deceased. Further relying on the decision of Hon'ble Supreme Court passed in Syed Sadiq and Others versus Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735 as well as decision of this court passed in Oriental Insurance Company Limited versus Mst Abeda Bibi & Ors reported in (2017) 6 WBLR (Cal) 69 he submitted that even in the absence of documentary evidence in support of income, the assertion of income of the victim made by the claimants is to be accepted and accordingly the income of the deceased is to be considered at Rs. 8,000/- per month for assessing just and fair compensation. In the light of his aforesaid submissions he prayed that the appeal be allowed and amount of compensation granted in favour of the claimants be enhanced.

8. In reply to the contentions raised on behalf of the appellants, Mr Soumalya Ganguli, learned advocate appearing for the respondent no.1-insurance company submitted that although salary certificate of the deceased-victim has been produced, marked as Exhibit 9, yet such document has not been sufficiently proved by best witness and hence the documentary evidence as above has got

no probative value and is liable to be ignored. He further submitted that the learned tribunal has rightly assessed the income of the deceased-victim to the tune of Rs.3,000/-per month. In view of his aforesaid submissions he prayed for dismissal of the appeal.

9. Having heard the rival contentions raised on behalf of the parties, it is found that the present appeal precisely hinges on the question of assessment of quantum of income of the deceased-victim at the time of accident. Mr. Banerjee, learned advocate for the appellants contended that the oral and documentary evidence clearly indicate that the income of the deceased-victim at the time of accident was Rs.8,000/- per month. Per contra Mr Ganguli, learned advocate for respondent no.1-insurance company contended that the income of the deceased-victim has not been proved by cogent evidence. The averments in the claim application shows that deceased-victim at the time of death used to work as a 'Khalasi' (cleaner) of the offending truck under its owner Rafit Ali and used to receive monthly salary of Rs.8,000/-. In her oral deposition the wife of the deceased-victim, Nurjahan Khatoon (PW1) stated of such income and also produced salary certificate which has been marked as Exhibit 9 (with objection). Be that as it may, neither the employer of the deceased-victim namely Md Rafit Ali who issued the salary certificate was examined in court to establish the authenticity of the said document nor any register maintained by the employer been produced in support of such salary certificate. Thus such document of salary has not been sufficiently proved.

9.1. It has been strenuously argued on behalf of the appellants relying on the decision of Hon'ble Supreme Court passed in Syed Sadiq (supra) that even in the absence of documentary evidence the assertion of the claimants regarding income of the deceased is to be accepted. Firstly, it is pertinent to note that the situation in case at hand is not that there was failure to produce documentary evidence of income of the deceased-victim rather it is a case where the documentary evidence which has been produced is not been proved by cogent and reliable witness. Secondly, the victim-injured in the case before the Hon'ble Supreme Court was engaged in vegetable vending work and considering the rising prices in agricultural products it was held that a vegetable vendor has capacity to earn Rs.6,500/- per month whereas in the case at hand the deceased-victim is a 'Khalasi' (cleaner) of a truck. Thus the decision cited as above on behalf of the appellants stands distinguished.

9.2. This court in Mst Abeda Bibi (supra) relying on the decision of Hon'ble Supreme court in Syed Sadiq's Case (supra) observed that the victim being involved in an unorganised sector carrying on business of vegetable vending was not expected to have documents to prove his monthly income and therefore it was quite impossible for the claimants to support the statement that the victim was in receipt of Rs. 5,000/-approximately as monthly income by producing documentary evidence. Needless to state that the situation in case at hand is not that there was failure to produce documentary evidence of income of deceased-victim rather it is a case where the documentary evidence produced is not been proved by cogent and reliable witness. Thus the decision cited as above on behalf of the appellant stands distinguished.

9.3. In the case of Ramchandrappa versus Manager, Royal Sundram Allaince Company Limited reported in (2011) 13 SCC 236 the Hon'ble Supreme Court observed as follows.

" 14.We hasten to add that in all cases and in all circumstances, the tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time…………."

In the present case the deceased-victim used to work as a 'Khalasi' (cleaner) of a truck. The assertion of the claimants that the deceased-victim used to receive monthly salary to the tune of Rs. 8,000/-appears to be exorbitant and exaggerated. However considering the prevailing price index and the profession of the deceased-victim at the relevant point of time an amount of Rs.5,000/- would be apposite to take into consideration as monthly income of the deceased-victim.

10. The learned tribunal considering the age of the deceased victim to be 40 years, following the decision of Hon'ble Supreme Court passed in Sarla Verma and Others versus Delhi Transport Corporation and Another reported in 2009 ACJ 1298 has rightly applied multiplier 15 for calculating the compensation amount.

11. It appears from the impugned judgment that the learned tribunal has made deductions to the extent of 1/5th towards personal and living expenses of the deceased. In the case at hand the claimants are the wife and five minor children of the deceased victim and thus the total number of dependent family members is 6. Accordingly following the observation of the Hon'ble Supreme Court made in Sarla Verma's Case (supra) the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/5th.

12. Following the decision of Hon'ble Supreme Court passed in National Insurance Company Limited versus Pranay Sethi and Others reported in 2017 ACJ 2700 the learned tribunal taking into account the age of the deceased victim to be 40 years has rightly granted additional amount of 25% towards future prospects.

13. Although the learned tribunal at page 10 of its judgment has observed that the claimants are entitled to compensation towards loss of estate, loss of consortium and funeral expenses but while making calculation of the amount of compensation no amount has been taken into account towards loss of estate. Accordingly such amount towards the aforesaid conventional head is also to be

taken into account for calculating the compensation.

14. Now taking into consideration the aforesaid aspects the compensation amount is calculated as hereunder.

Calculation of compensation

Monthly Income…………………………………..….Rs.5,000/-

Annual Income…..(Rs.5000/- X 12)……………Rs. 60,000/-

Add: Future Prospects @ 25% of total Income…Rs.15,000/-

Annual loss of Income………………………………Rs.75,000/-

Less: Deduction 1/4th of the Annual Income

towards personal and living expenses………….. Rs.18,750/-

Rs.56,250/-

Adopting multiplier 15 (Rs.56,250/- X 15)……....Rs.8,43,750/-

Add: General Damages………………………………….Rs.70,000/-

Loss of estate….Rs.15,000/-

Loss of Consortium….Rs.40,000/-

Funeral Expenses…….Rs.15,000/-

Total Compensation……………………….Rs.9,13,750/-

15. Thus the total compensation comes to Rs.9,13,750/-. It is informed that the claimants have already received the amount of compensation of Rs.5,95,000/- along with interest as directed by the learned tribunal.

16. Accordingly, respondent no.1- Cholamandalam MS General Insurance Company Limited is directed to deposit the balance amount of Rs. 3,18,750/- together with interest @ 6% per annum from the date of filing of the claim application till deposit, by way of cheque with the learned Registrar General, High Court, Calcutta within a period of four weeks from date. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the said amount in favour of appellants-claimants in equal share on satisfaction of their identity.

17. Appellant no.1, mother and natural guardian of minors, being appellant nos. 2 to 6, shall receive the share of the minors on their behalf and shall deposit the said amount in fixed deposit scheme of any Nationalised Bank or Post Office till the attainment of the majority of the minors.

18. Accordingly the appeal stands allowed on contest against respondent no.1- Insurance Company and exparte against respondent no.2-Owner of the offending vehicle. The impugned judgment and award of the tribunal stands modified to

the aforesaid extent. No order as to cost.

19. With the aforesaid direction the appeal stands disposed of.

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

21. Interim order, if any, also stands vacated.

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

