(2022) 06 CAL CK 0102

In the Calcutta High Court

Case No : FMA No. 1118 Of 2008

Pranati Mondal APPELLANT

Vs

Oriental Insurance Company Limited RESPONDENT

Date of Decision : 30-06-2022

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 337, 338

Citation : (2022) 06 CAL CK 0102

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : Krishanu Banik, Sanchita Ghosh, Rajesh Singh

Final Decision : Allowed

Judgement

Rabindranath Samanta, J

1. Feeling aggrieved by the inadequate compensation awarded by the learned Tribunal, Motor Accident Claims Tribunal, 5th Court, Paschim Medinipur in M.A.C case No. 546 of 2003, the appellants have preferred the instant appeal.

2. The facts of the claim case brought by the appellants as claimants may briefly be stated as follows:-

On 24th November, 2002 at about 3:30 P.M. while the victim Bharat Mondal was going towards Sultan Nagar from Gopiganj along Sultan Nagar Gopiganj Metal Road by the offending vehicle No. WB-29/4002(mini truck) as a khalasi, the vehicle was proceeding with excessive high speed endangering human life and safety without blowing any horn. When the vehicle reached Tetultola it dashed road side pedestrians and got capsized. As a result, the victim sustained severe injuries on his person and he died on the spot. The accident took place due to rash and negligent driving on the part of the driver of the offending vehicle.

3. On the aforesaid accident an FIR was lodged at Daspur Police Station and the FIR was registered as Daspur P.S Case No. 73 of 2002 dated 25.11.2002 under

Sections 279/337/338/304A of Indian Penal Code.

4. The victim died at the age of 32 years. He died leaving behind him claimant No. 1 Smt. Pranati Mondal as wife, claimant Nos. 2 and 3 Chandan Mondal and Subrata Mondal as sons, claimant No. 4 Supriya Mondal as daughter and claimant No.5 Sarala Bala Mondal as mother and they are his legal heirs. The victim used to earn Rs. 2,500/- per month.

5. At the time of the accident the offending vehicle was insured with the respondent No. 1 the Oriental Insurance Company Limited.

6. Under the aforesaid facts and circumstances the appellants/claimants sought for compensation of Rs.3,00,000/- with interest from the date of the filing of the claim application.

7. The respondent No.1, the Oriental Insurance Company Limited contested the claim case by filing a written objection wherein it denied all the averments as made in the claim application and sought for dismissal of the case.

8. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:-

i) Is the claim case maintainable in its present form ?

ii) Did the accident, resulting in death of Bharat Mondal, occur due to rash and negligent driving on the part of the driver of offending vehicle no. WB-29/4002 (mini truck)?

iii) Was the offending vehicle insured with the insurer Oriental Insurance Company Limited on the date of the accident?

iv) Whether there has been violation of any terms of insurance policy?

v) Are the claimants entitled to get the compensation as prayed for and if so, to what extent ?

9. Mr. Krishanu Banik, learned Counsel appearing for the appellants submits that the learned Tribunal erred in holding that the victim was a gratuitous passenger of the offending vehicle and his yearly income was Rs.15,000/- as a non-earning person. Learned Counsel submits that the evidence adduced by P.W. 1 Pranati Mondal convincingly proves that her husband the victim Bharat Mondal used to earn Rs.2,500/- per month as a khalasi of the offending vehicle. Learned Counsel argues that the computation of compensation made by the learned Tribunal is erroneous. It is his further argument that the award of the learned Tribunal that the claimants would get interest at the rate of 6% per annum on the failure on the part of the Insurance Company to pay compensation within a specified period is vitiated with errors. Besides, learned Counsel submits that the claimants are entitled to future prospect in view of the latest decision of the Hon'ble Apex Court in the case of National Insurance Company Limited - Vs- Pranay Sethi and Ors reported in (2017) 16 SCC 680.

10. Per Contra, Mr. Rajesh Singh, learned Counsel appearing for the respondent No.1 submits that as per the observations of the learned Tribunal, the victim was a gratuitous passenger of the offending vehicle (mini truck) which was never meant for carrying passengers/commuters. Such being the observations, the claimants ordinarily should not get the compensation as sought for by them. However, Mr. Singh submits that as directed by the learned Tribunal liberty be given to the Insurance Company to realise the amount of compensation, if awarded by this Court from the owner of the offending vehicle.

11. As it is evident from Exhibit 3/1 i.e. the charge-sheet in respect of Daspur P.S Case no. 73 of 2002 dated 25.11.2002 under Sections 279/337/338/304A, Indian Penal Code that on collection of the materials it was found that a primafacie case was established against the driver of the offending vehicle and accordingly charge-sheet was submitted against him. Be that as it may, the claimants in order to prove the accident due to rash and negligent driving on the part of the driver of the offending vehicle has examined Ramprasad Kundu (P.W. 2). After analysing the evidence of P.W. 2 I find that this witness has stoutly deposed that due to rash and negligent driving of the offending truck by its driver on 24.11.2002 at 3:30 P.M, the accident took place and the victim Bharat Mondal who was a khalasi of the truck died on the spot.

12. All these clearly establish that due to rash and negligent driving of the offending vehicle the accident took place and the victim Bharat Mondal sustaining serious injuries on his person died on the spot. P.W. 1 Smt. Pranati Mondal in her evidence in chief has testified that her husband was travelling in the offending vehicle as its helper. In cross-examination she has stated that her husband worked as a helper of the vehicle for about two years prior to the date of the accident. The overall case of the claimants is that the victim was a khalasi and as such the evidence of P.W. 1 to the extent that her husband was a helper shall denote that in fact her husband, the victim was a khalasi of the offending vehicle.

13. The learned Tribunal on scrutinising the Voter's Identity Card of the victim has observed that the victim died at the age of 32 years.

14. Admittedly, the offending vehicle was insured with the respondent No. 1 the Oriental Insurance Company Limited on the date of the accident.

15. However, the learned Tribunal holding the annual income of the victim as Rs.15,000/-, applied multiplier 17 and adding a sum of Rs.5,000/- as loss of consortium and Rs.2,000/- as funeral expenses awarded the compensation as above.

16. P.W.1 has convincingly testified in her evidence in chief that her husband as a helper of the offending vehicle used to earn Rs.2,500/- per month. Such evidence of her in cross-examination remains unshaken. In the absence of any other evidence to the contrary, this Court holds that the victim used to earn Rs.2,500/- per month.

17. It is not in dispute that up to the year 2010 minimum income of a workman/ labourer per month was to be held Rs. 3,000/-. That being so, the monthly income of Rs.2,500/- as claimed by the claimants is justified.

18. Since the victim Bharat Mondal died at the age of 32 years, multiplier

16 shall be applied in view 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.

19. If it is calculated, the annual income of the victim would come to Rs.30,000/- (Rs.2,500x12). In the decision in the case of National Insurance Company Limited -Vs- Pranay Sethi and Ors reported in (2017) 16 SCC 680 the Hon'ble Apex Court at paragraph 59.4 has held 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. In view of the decision supra future prospect at the rate of 40% shall be assessed at Rs. 12,000/-. Therefore, the total income of the victim would come to Rs. 42,000/- per annum.

20. Since the victim had five family members, the 1/4th deduction will be made towards his personal and living expense. On computation the figure comes to Rs.31,500/- (Rs.42,000- Rs.10,500). If this amount of Rs.31,500/- is multiplied by the multiplier 16 the figure comes to Rs. 5,04,000/-.

21. The Hon'ble Apex Court in the decision reported in (2017) 16 SCC 680 supra has held at paragraph 52 that the figures as held 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 widow of the deceased is entitled to get Rs.40,000/- as consortium and the claimants jointly are entitled to get Rs. 15,000/- as loss of estate and Rs.15,000/- as funeral expenses. If such amount is added, the compensation would come to Rs.5,74,000/-.

22. The Insurance Company has already paid the awarded money as directed by the Tribunal to the extent of Rs.1,79,000/-. On deduction of this amount, the claimants are further entitled to get Rs. 3,95,500/-.

23. The claimants shall get 6% interest on the aforesaid amount of Rs. 3,95,500/- since the filing of the claim application. On calculation, the interest comes to Rs.4,26,060/- . In view of the above, the claimants are entitled to get compensation of Rs.8,21,560/-(Rs.3,95,500+Rs.4,26,060).

24. In view of the observations as above, the award passed by the learned Tribunal warrants interference by this Court and the award should be modified.

25. In the result, the appeal is allowed on contest against the respondent No.1 and ex parte against the respondent no.2.

26. It be noted here that while the claim application was filed on 17.04.2003 the claimant Nos. 2 to 4 namely Chandan Mondal, Subrata Mondal and Supriya

Mondal, two sons and a daughter of the deceased were aged 9 years, 7 years and 4 years respectively. Since filing of the claim application more than 19 years have passed. Therefore, the claimant Nos. 2 to 4 who were then minor have now attained majority. This be noted in the memorandum of appeal and other relevant papers, if any, by correction.

27. The respondent No.1, the Oriental Insurance Company Limited is directed to deposit a sum of Rs. 8,21,560/- by cheque with the learned Registrar General, High Court Calcutta within four weeks from date. After such deposit is made, the learned Registrar General shall release the amount of Rs. 7,81,560/- out of the deposited amount of money to all the claimants including the claimant No.1 in equal share and release the rest amount of Rs. 40,000/- as consortium to the claimant No.1 after being satisfied with their identity.

28. However, as directed by the learned Tribunal, liberty is given to the Respondent No.1, Oriental Insurance Company to realise the amount of compensation from the respondent No.2, the owner of the offending vehicle.

29. Thus the appeal and the connected application, if any, stand disposed of.

30. No order as to costs.

31. Send down the LCR along with a copy of this judgment to the learned Motor Accident Claims Tribunal.

32. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.