14.12.2020.
Item no. 89.
Court No. 13
ap

F.M.A. No. 2244 of 2013
With
I.A. No. 4 of 2018 (Old CAN 6121 of 2018)

The Oriental Insurance Company Limited
Versus
Smt. Lipi Ghosal & Ors.

Mr. Parimal Kumar Pahari.
..For the appellant.

Mr. Kishanu Banik.
...For the respondents.

By consent of the parties, cross-objection being COT 36 of 2014 is treated on the day's list taken up for hearing along with the appeal.

This appeal by the Insurance Company is directed against a judgment and order dated 26th April, 2012 passed by the Motor Accident Claims Tribunal, Fast Track Court No.5, Barasat, North 24 Parganas in M.A.C. Case No. 06 of 2012.

The brief facts of the case are that the claimant no.1's husband was riding a motor cycle on Jessore Road where the offending vehicle being a public bus bearing No. WB-25B/2237 proceeding in a rash and negligent manner, dashed the victim's motor cycle head on. The victim died at the spot.

Habra Police Station Case No. 212 of 2007 dated 24.08.2007 under Sections 279/304A of the Indian Penal Code was started. The victim was 37 years old at the time of accident. A claim under Section 166 of the M.V.

Act, 1988 for Rs.10,00,000/- was lodged in the Court below stating that the income of the victim was Rs.9,000/- per month.

The owner was impleaded as OP-1 and the Insurance Company was impleaded as OP-2. The claimant examined herself and produced a drug licence to show that her husband was running a Medical Shop, based on which she deposed that her husband was earning Rs.9,000/- per month. No other evidence whatsoever to support the claim of her husband's earning was produced in the Court below. The claimant could have produced books of accounts, income tax returns, sale and purchase documents of medicines, which has not been done.

This Court is, therefore, of the view that the Tribunal cannot be faulted for coming into conclusion that the earning of an unskilled labourer i.e. Rs.3,000/- per month should be taken as the income of the victim.

The Insurance Company would, however, argue that there is serious doubt, based on the evidence on record, as to whether the offending vehicle bus was at all involved in the accident. The witnesses produced by the Insurance Company were the bus owner, the Regional Manager and the Insurance Investigator and their Divisional Manager as PW-1, PW-2 and PW-3 respectively.

The owner of the vehicle deposed that his vehicle was undergoing repairs at a garage and produced a certificate from such garage. He, however, did not file any written statement. The named driver in the FIR and charge-sheet, according to the OP-1, was not the driver of the vehicle. The logbooks of the vehicle were not produced.

The investigator's evidence is rather baffling. He deposed that his entire report was based on a newspaper extract from the Ananda Bazar Patrika, a vernacular daily. The Divisional Manager's evidence is of no use.

Hence, the Insurance Company's contention is that a matadoor was actually involved in the accident and not the bus, based on newspaper report, cannot be believed and was rightly ignored by the Tribunal below.

The liability of the Insurance Company arrived at by the Court below is, thus, sustained. It, however, appears, as argued in the cross-objection filed by the claimants before this Court that in terms of the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited – Vs. – Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680,*** in the case of ***Sarala Verma – Vs. – Delhi Transport Corporation*** reported in **(2009) 6 SCC 121** and in the case of ***Laxmi Devi – Vs. – Md. Tabbar*** reported in **(2009) 1 SCC (Crim) 336**, the claimants were entitled to general damages at Rs.70,000/-. The victim was 37 years old at the time of accident and future prospects have not been considered by the Court below.

Hence, the claimants are entitled to 40% of the assessed income towards future prospects and a sum of Rs.70,000/- towards general damage. The Award passed by the Court below is modified in terms of the table set out hereinbelow:

Particulars	Amount (Rs.)
Yearly income (Rs.3,000/- x 12)	36,000.00
Add: Future prospect 40%	14,400.00
	50,400.00
Deduction of 1/3rd amount on account of personal living expenses if the deceased would have been alive.	33,600.00
Multiplier of 15 be used as per age of the deceased	(x) 15
	5,04,000.00
On account of General Damages	70,000.00
Total	5,74,000.00
Less: amount already withdrawn by the claimants	1,93,000.00

Counsel for the claimants submits that his clients have received 50% of the entire sum awarded by the Court below and the balance remains deposited with the Registrar General of this Court.

The Insurance Company shall be liable to pay balance sum of Rs.3,81,000/- together with interest as awarded by the Court below from the date of filing of the claim petition till the date of payment and shall be distributed in the proportion as decided by the Court below.

The Insurance Company shall make payment to the claimants/respondents as indicated hereinabove within a period of 45 days from the date of receipt of the Bank particulars of the claimants/respondents into their respective Bank accounts.

Since the amount of Rs.1,93,000/- withdrawn did not carry interest at the rate of 9% per annum as awarded by the Court below and upheld by this Court, the claimants/respondents shall also be entitled to interest on the said sum of Rs.1,93,000/- on and from the date of filing of this claim petition till the date of withdrawal that is 22nd January, 2014.

Upon making such payment, the Insurance Company shall be entitled to receive back from the Registrar General of this Court all sums deposited and remaining together with interest. The same shall be made over to an authorized representative of the Insurance Company, whose name shall be indicated in the application for refund.

With the aforesaid directions, the instant appeal and cross-objection being COT 36 of 2014 is disposed of.

The lower court records shall be sent back to the Court below by the Registry forthwith.

In view of the disposal of the appeal itself, the connected application being CAN 6121 of 2018 is also disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)