07.12.2020.
Item no. 114.
Court No. 13
ap

F.M.A. No. 4362 of 2016
With
I.A. No. 1 of 2016 (Old CAN 8040 of 2016)
And
I.A. No.2 of 2017 (Old CAN 1036 of 2017)

Royal Sundaram Alliance Insurance Company Limited
Versus
Smt. Rita Dey & Anr.

Mr. Rajesh Singh.
..For the appellant.

Mr. Jayanta Kumar Mondal.
...For the respondents/claimants.

The appeal is directed against the judgment and order dated 28th April, 2016 passed by the Motor Accident Claims Tribunal, 1st Court, Barasat, North 24 Parganas in M.A.C.C. No. 154 of 2010 renumbered as M.A.C.C. No. 3216 of 2014.

The brief facts of the case are that the victim, Dilip Kumar Dey is the husband of the respondent no.1, Rita Dey, was travelling on a bicycle on 24th June, 2009 on Jessore Road near Bidhan Market when the offending vehicle being Maruti Alto (WB24K-3871) dashed the victim while being driven rashly and negligently. The victim sustained severe injury to his person and suffered fracture injuries to his leg. The medical certificate on record indicated permanent disability to the extent of 84%. The Court below received evidence in the form of FIR, seizure list, charge-sheet, insurance policy, registration certificate, hospital and medical bills, disability certificate and Income Tax Returns. The medical/disability certificate being Exhibit 15 indicated 84% permanent disability. It was also found by the Court below that for the year 2008-2009, the victim earned a sum of Rs.1,72,722/- whereas for the year 2011-2012, he earned a sum of Rs.1,02,115/-. A reduction of Rs.73,000/- was found in the income of the victim.

The Court below thereupon went on to assess that the victim's monthly income came to be reduced between Rs.5,000/- to Rs.6,000/- per month. The Court below thereupon opined that the victim suffered a loss of earning of Rs.70,000/- per year.

Mr. Rajesh Singh, learned Advocate appearing on behalf of the Insurance Company would argue before this Court that there is in fact no clear co-relation between the degree of disability as reflected in the disability certificate and the actual reason for the loss of income. He further argued that even assuming for the sake of argument that the loss of income could have been Rs.70,000/- for two years but the same could not have been awarded for the balance of the victim's working life.

I have carefully considered the argument of the appellant and the respondents.

Admittedly the victim was a Life Insurance Company Agent, whose primary income is from commission paid out of the premiums paid on the insurance policies of assured people, which the agent by reason of his efforts accumulates and sells policies. The commission of an agent is his sole income. Such income is never paid in cash and is only credited by the Life Insurance Corporation of India to the Bank Accounts of the agents even during the year 2011-2012. Alternatively the amounts are paid out by the Bank instruments. The reduction in the income can definitely be a probable and likely cause and axiomatic to the degree of disability certified by the Medical Professionals.

It is indeed true that not every degree of disability leads to a corresponding loss of income, the burden of proof to the contrary, therefore, vested with the Insurance Company. The respondent/claimant no.1 had discharged her burden of proof. In the absence of any contrary evidence having been produced by the Insurance Company in the Court below, the task of Mr. Rajesh Singh, Advocate has become onerous and nearly impossible.

The Trial Judge has applied accepted principles of adjudication in civil matters particularly Motor Accident Claims being the principle of preponderance of probabilities. The conclusion arrived at by the Court below cannot be faulted or stated to be de hors the evidence on record or incredible. The said conclusion, therefore, is according to this Court, very probable and does not call for any interference.

In view of the above, the respondents/claimant shall be entitled to withdraw the entire sum deposited by the Insurance Company with the Registrar General of this Court in aid of the instant appeal together with any accrued interest thereon.

The Registrar General of this Court shall within a period of two months from the date of receiving such formal application indicating the Bank particulars of the respondents/claimants shall transmit unto such Bank Accounts, the entire sum deposited by the appellant/Insurance Company, together with accrued interest thereon.

The appeal shall stand disposed of in terms of the above directions.

In view of the disposal of the appeal itself, the connected applications being CAN 8040 of 2016 and CAN 1036 of 2017 are 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.)