

S/L 11
23.8.2021
Court No.26
SD

FMAT 1158 of 2018
With
CAN 1 of 2018
(Old CAN 9597 of 2018)
With
CAN 2 of 2019
(Old CAN 7466 of 2019)
(Application is not in the file)
(Via Video Conference)

The National Insurance Co. Ltd.
Vs.
Mahua Bhar & Ors.

Mr. Sanjay Paul

...for the Appellant/Insurance Co.

Mr. Ashique Mondal

...for the Respondents/Claimants.

The appeal is directed against the judgment and award dated 12th June, 2018 passed by the Judge, Motor Accident Claims Tribunal-cum-Additional District & Sessions Judge, 1st Court, Hooghly, in M.A.C. Case No. 79 of 2015. The claim was filed under Section 166 of the M. V. Act, 1988.

The appeal has been preferred by the appellant insurance company, inter alia, primarily on the ground of quantum of the compensation awarded by the Tribunal. It is argued by counsel for the appellant/insurance company that the Tribunal has wrongly assessed the annual income of the deceased and has applied the wrong multiplier apropos the age of the deceased at the time of accident.

Mr. Paul further submits that the Tribunal erred in law while assessing annual loss of dependency by ignoring the fact that the business of the victim is still running and the claimants are still enjoying income from said business of the victim, therefore, the Tribunal ought to have considered this

aspect while assessing the pecuniary loss as well as annual loss of dependency.

Per contra, counsel for the respondent Nos. 1-4/ claimants submits that the Tribunal has taken the income of the deceased victim incorrectly and the same is on lower side. Compensation granted under the head of loss of consortium has also been challenged by way of COT 66 of 2019.

The accident occurred and the victim died on 4th February, 2015. The Tribunal has arrived at the annual income of the victim on the basis of Exhibit 14 Series which apart from the income tax return for financial year 2013 – 2014, contains the audited balance sheet for the year ending 31.03.2014. On the basis of the said evidence, the Tribunal has considered annual income of the victim as Rs. 4,08,675/- . This is disputed by the counsel for the appellant/ insurance company who submits that the said income tax return has been filed on 25.03.2015 i.e. after the death of accident.

It is argued that the income reflected in the said income tax return has been inflated for the purpose of getting higher compensation in the instant proceedings. Counsel for the appellant/ insurance company submits that the income tax return for the financial year 2012 - 2013 ought to have been taken into account which was filed much before the accident by the deceased victim himself. Taking into consideration the fact that the victim died on 4th February, 2015, to remove any doubts, the income of the victim as reflected in the income tax return for the financial year 2012 - 2013 i.e. assessment year 2013 – 2014 should be taken into account for the purpose of arriving at the income of the victim at the time of accident. The income tax return for assessment year 2013 – 2014 exhibited before the Learned Tribunal below as Exhibit 12 reveals that the total income of the victim for such year was Rs. 3,28,285/- from which tax of Rs. 2,690/- should be deducted which would take the annual

income of the victim to Rs. 3,25,595/- per annum. The multiplier should be taken as 14 instead of 15 since the age of the victim was 43 years. Regarding pecuniary advantage as received by the claimants from the business of the deceased, there is no evidence as adduced by the appellant before the tribunal to establish the actual pecuniary advantage as received by the claimants from the said business. Therefore, I am not inclined to interfere with the findings of the tribunal.

The remaining factors of computation of payable compensation has been well-settled by the Hon'ble Apex Court in ***National Insurance Company Limited –vs.- Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***. The general damages of Rs. 70,000/- should stand increased by 10% i.e. Rs. 77,000/- in terms of the dictat of the Hon'ble Apex Court in ***National Insurance Company Limited –vs.- Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***.

Be that as it may, considering the rival submissions of the parties as well as judgment of Hon'ble Apex Court as well as general practice of our High Court, above award passed by the Tribunal below is modified and recalculated as follows:

Particulars	Amount (Rs.)
Annual Income	3,25,595/-
Less - 1/4 th towards personal expenses (Rs. 81,399/-)	2,44,196/-
Add- 25% additional income towards future prospects (Rs. 61,049/-)	3,05,245/-
Multiplier (14)	42,73,430/-
Loss of consortium	44,000/-
Loss of estate	16,500/-
Funeral expenses	16,500/-
Total	43,65,430/-

Counsel for the appellant/insurance company submits that he had deposited the entire awarded amount along with interest, being Rs. 78,42,399/-, before the Registrar General

of this Hon'ble Court in terms of an order of this Hon'ble Court dated 15.03.2019. The respondent No. 1/ claimant shall be entitled to a consolidated sum of Rs. 43,65,430/- on account of compensation together with interest at the rate of 8% per annum to be calculated by the Registrar General from the date of filing i.e. 20.04.2015 till the date of payment. The respondent No. 1/ claimant is granted liberty to approach the Registrar General of this Court for release of such sum. If an approach is made, the Registrar General shall take immediate steps to release the same positively within four weeks from date. The appellant/ insurance company is granted liberty to approach the Registrar General of this Court for release of the balance amount together with interest accrued thereon.

With the aforesaid directions, the instant appeal is disposed of.

There shall be no order as to costs.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

The Registry is directed to send down the lower court records at once, if received by this time.

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

(Shekhar B. Saraf, J.)