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March 25, 2021.
AKG

**CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri**

FMAT 48 of 2019

(Through Video Conference)

Smt. Arati Chakraborty

-vs.-

National Insurance Company Limited & Anr.

Mr. Krishanu Banik,
Mr. Tamal Kr. Sen,
Mr. Priyankar Dey,
Mr. Milan Chandra Laskar.

...for the Appellant.

Mr. Gobinda Saha.

... for the Insurance Company.

The only point urged by Mr. Krishanu Banik, learned advocate for the appellant to assail the judgment and award dated September 4, 2019 passed in MAC Case No. 151 of 2018 is that the tribunal below erred in arriving at a finding that the monthly income of the deceased for the purpose of computation of the award should have been taken to be Rs. 6,000/- only.

Mr. Banik submits that in the claim application, it was mentioned that the deceased was in employment and his mother in her deposition led oral evidence to the effect that the deceased used to earn Rs. 8,000/- per month.

Mr. Banik in support of his contention relies upon the judgments reported at 2019 (3) TAC 68 (*Royal*

Sundaram Alliance Insurance Company Limited v. Sulekha Mondal (Adhikary)), (2017) 6 WBLR (CAL) 203 (National Insurance Company Ltd. v. Sujata Manna) and 2003 (2) T.A.C. 435 (Cal) (Smt. Bilasini Mondal v. National Insurance Company Limited).

It appears that the claim petition filed by the appellant did not disclose the nature of occupation of the deceased. Simply, the word “service” was mentioned without furnishing any particulars of his employment or his employer.

Turning to the evidence, adduced by the mother of the victim by way of affidavit, it appears that again no such particulars were brought on record by way of evidence. The relevant part of the deposition is quoted below :-

“8. *That my son was 26 years old at the time of accident.*

.....This is true to my knowledge & belief.

9. *That my son was attached with a private work & used to earn a sum of Rs. 8000/- per month from the said concern.*

.....This is true to my knowledge & belief.”

The tribunal below discarded such evidence as no document had been exhibited by the claimant in support of such income. Since no suggestion was given by the insurance company to the effect that the

deceased was unemployed at the time of accident, the tribunal felt that the income of the deceased should be assessed on the basis of the income of an unskilled labourer.

Upon such premises, the tribunal had come to the conclusion that the income of the deceased should be taken to be Rs. 6,000/- per month as a private employee.

The judgment reported at (2017) 6 WBLR (CAL) 203 deals with a victim who had a hair cutting saloon. Upon such findings, the Division Bench considered the income of the victim to be Rs. 6,000/- per month.

The judgment passed in 2003 (2) T.A.C. 435 (Cal) is of no help to the appellant. It was held in the said judgment that oral evidence can be taken into consideration even if the same was not supported by any documentary evidence. In the present case, the oral evidence was grossly inadequate. Failure to disclose the particulars of the employment only could give rise to the suspicion as to the veracity of the claim with regard to the income of the deceased.

The judgment reported at 2019 (3) TAC 68 dealt with a case where the insurance company preferred an appeal against the finding of the tribunal which determined the income of the deceased as Rs. 10,000/- per month. In that case it was claimed that the deceased was a skilled quack doctor. The claimant

produced a certificate issued by Pradhan of the concerned Gram Panchayat who certified monthly income of the deceased to be Rs. 10,000/- per month. That apart one doctor who was associated with the deceased also deposed before the tribunal to support the income of the deceased. In the facts of that case monthly income of the deceased was assessed as Rs. 9,000/-.

The facts are totally different here.

In the present case, I have already indicated that the deposition of the mother of the deceased was bereft of any particulars of the alleged employment.

I do not find any reason to interfere with findings of the tribunal. It is an acceptable practice to assess the monthly income of a deceased, whose income has not been proved otherwise, on the basis of the prevalent monthly income of an unskilled labourer.

Accordingly, FMAT 48 of 2019 is dismissed.

Certified website copy of this order, if applied for, be immediately made available to the learned advocates appearing for the parties upon compliance of all requisite formalities.

(Kausik Chanda, J.)