21.09.2022
Court No.237
Item No.16
AP

FMA 1323 of 2012
With
CAN 2 of 2015 (Old No. CAN 1292 of 2015)

Smt. Indrani Bej and Ors.
Versus
The National Insurance Company Limited and Anr.

Mr. Amit Ranjan Roy
...For the Appellants.

Mr. Afroz Alam
..For the Insurance Company.

This appeal is directed against the judgment passed in M.A.C. Case No.30 of 2007 by the learned Judge, Motor Accident claims Tribunal, Purba Medinipur on a claim petition filed under Section 166 of the Motor Vehicles Act whereby the learned tribunal awarded total compensation of Rs.4,77,500/-.

The claim petition was filed with a prayer for compensation to the tune of Rs.11,00,000/- on acount of death of one Avishek @ Sankar Bej @ Avisek on 20th December 2006 at about 12:45 hours while the deceased person was proceeding towards Moyna from Srirampur on his motorcycle one lorry bearing Registration No. WB-33A/1377 coming from the opposite side with high speed in negligent manner dashed the motorcycle and as a result of which the said Avishek fell down and died on spot.

On receipt of the written complaint Moyna Police Case No.76 of 2006 dated 20th December 2006 under Sections 279/338/304(A)/427 of the Indian Penal code was started and charge sheet was submitted against the driver of the offending vehicle.

The respondent/insurance company contested the case by filling the written statement denying all the materials allegations of the claim petition.

In course of proceeding before the Tribunal claimants examined four witnesses including the petitioner No.1, the wife of the deceased.

In course of evidence, PW 1 testified about the accident alleged in this case and disclosed monthly income of Rs.8,000/- of her deceased husband from his pisciculture business.

PW 2 proved the accident at the instance of the driver of the lorry.

PW 3 testified about taking up cash credit loan of Rs.50,00,000/- from a bank for running pisciculture business after mortgaging his plot of land.

PW 4, Fishery Extension Officer, stated about Techno Economic Feasibility Report in favour of the deceased at the time of granting loan.

In Course of their evidence some documents were admitted in evidence. The Techno Economic Feasibility Report and other documents of land have been filed including the bank statement showing repayment of loan.

On appreciation of evidence as well as documents available on record, learned Judge of the Tribunal considered the monthly income of the deceased as Rs.4,000/-.

In that view of the matter, learned Judge calculated the total compensation at Rs.4,77,500/- after adding other entitlements.

Learned advocate appearing on behalf of the claimants/appellants has submitted before this Court that the documents exhibited in this case clearly show that deceased had income of Rs.8,000/- per annum. It is further submitted that income of the deceased can be presumed from the huge amount of cash credit loan as well as repayment of loan to the bank.

Learned advocate appearing on behalf of the respondent insurance company submitted that no specific document has either been filed in connection with this case showing income of the deceased and, therefore, learned Tribunal rightly assessed the monthly income at Rs.4,000/- per annum.

I recorded the submission of the learned advocate appearing on behalf of the appellants/claimants that claimant No.2 (Purohit Bej) and claimant No.3 (Nibedan Bej) have already attained majority.

After careful perusal of the entire evidence I also find that there is no document showing specific income of the deceased at the time of death. Only filing of documents showing grant of loan and repayment of loan does not necessarily indicate that deceased used to earn Rs.8,000/- per month.

In view of the aforesaid conspectus, I find hardly any scope to interfere with the observation of the learned Tribunal with regard to assessment of monthly income of Rs.4,000/- per month.

If that be the position, I find no other alternative but to determine the compensation in terms of settled parameters laid down by the Hon'ble Apex Court, as follows:-

Monthly Income	:	Rs.4,000/-
Annual Income (Rs.4,000 x 12)	:	Rs.48,000/-
After deduction of 1/4th (Rs.12,000/-) (Personal Expenses)	:	Rs.36,000/-
Add: Future Prospects (40%)	:	Rs.14,400/-
Total :	:	Rs.50,400/-
Multiplier (Rs.50,400/- x 16) (Age 31 years)	:	Rs.8,06,400/-
Loss of Dependency	:	Rs.8,06,400/-
Add: General Damages	:	Rs.70,000/-
Total	:	Rs.8,76,400/-
Already paid	:	Rs.4,77,500/-
Balance Amount	**:**	**Rs.3,98,900/-**

The respondent/insurance company is directed to pay the balance amount of Rs.3,98,900/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. 6th February 2007, till the deposit of the amount before the learned Registrar General of this Court within six weeks from date.

Claimants are entitled to the balance amount of compensation subject to the payment of *ad valorem* Court Fees thereon.

Learned Registrar General will disburse the amount to the four claimants out of five claimants (excluding father i.e. Malay Bej @ Maay Kumar) in equal share.

In view of the aforesaid observation, the appeal being FMA 1323 of 2012 shall stand disposed of and all pending applications, if there be any, shall stand disposed of.

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

(Bibhas Ranjan De, J.)