22.11.2022
List – D/L.
Sl.No.13.
Mithun
Ct.No.237.

FMA 199 of 2011

Smt. Pinki Porel & Ors.
Vs.
G.Singh & Ors.

Mr. S. Bhowmick, Adv.
Mr. L.M.Ghosh, Adv,
Ms. Srilekha Chatterjee, Adv.
...for the appellants/claimants.

Mr. Sanjay Paul, Adv.
...for the respondent/Insurance Co.

This is an appeal directed against the judgement and award passed by the Motor Accident Claims Tribunal, Howrah (Learned Fast Track 2nd Court) whereby learned Tribunal dismissed the claim application filed under Section 166 of the Motor Vehicles Act, 1988.

Claim petition arose on account of death of Pravash Porel, husband of claimant No.1 Pinki Porel on 01.07.2005 at about 00.15 hours over Andul Road near Crustal Cables. On the relevant date and time the said Pravash Porel was travelling by a Maruti car bearing No.WB-12A-6522 proceeding from Dhulagarh side towards Howrah side along the left side of the road and at the material point of time a vehicle bearing No.WB-23/2389 coming from the Howrah side i.e. opposite direction with high speed and in negligent manner dashed the Maruti vehicle which was driven by the victim. In effect, Pravash Porel died on spot.

After the accident Sankrail Police Station Case No.167 of 2005 was started against the driver of the vehicle No.WB23/2389 under Sections 279/427/304A of the IPC and charge-sheet was filed accordingly.

The owner of the vehicle No.WB-23/2389 did not contest the claim petition but the New Indian Assurance Co. Ltd. contested the case by filing written statement denying all material facts delineated in the claim petition containing, *inter alia*, that Insurance Company is not liable to pay any compensation.

In course of trial claimant No.1, i.e. wife of the deceased was examined as P.W.1 and in course of her evidence she stated about the accident though she was not present at the relevant point of time. She stated about monthly income and business of her deceased husband who was 28 years of age and that is why prayed for compensation to the tune of Rs.3,00,000/-.

In course of her evidence Certified copy of FIR, certified copy of charge-sheet, Post Mortem Report, Insurance Policy, Registration Card for Telephone Connection and Provisional Certificate of enlistment for Trade Licence were admitted in evidence as Exbt.1 to 7.

One Dilip Bajil was examined as P.W.2 on behalf of the claimants and in course of his evidence he deposed that on the relevant date and time he was present on the spot and saw the accident which took place only due to rash and negligent driving of the driver of the vehicle No.WB-23/2389. In course of examination, he also stated that he witnessed the accident and police examined him.

Learned Tribunal dismissed the claim petition on the ground that the claimants failed to prove the accident by the involvement of the vehicle alleged. According to learned Tribunal the eye witness (P.W.2) was not cited as charge-sheeted witness in connection with Sankrail Police Station Case No.167 of 2005 and that is why learned Tribunal could not believe the evidence of P.W.2 who claimed himself to be an eye witness of the accident alleged in this case.

Learned Advocate on behalf of the appellants has referred to the judgment passed by the learned Tribunal and has submitted that learned Tribunal committed wrong in marshaling of facts alleged in this case. Besides, the learned Advocate for the appellant has further submitted that the grounds taken by the learned Tribunal is also wrong.

Learned Advocate on behalf of the Insurance Company supported the judgment passed by the learned Tribunal.

Most humbly I differ from the views taken by the learned Tribunal for refusal of the claim in the case. Learned Tribunal did not believe the evidence of P.W.2 i.e. eye witness on the ground that his name did not find place in the witness list of the charge-sheet submitted by the police in connection with the accident. We should not unmindful as to the object of the enactment of this beneficial legislation where the principle of preponderance of probability and proof beyond reasonable doubt has no application.

P.W.2 claiming himself to be an eye witness has deposed before the Tribunal after taking oath that he saw the accident and he remained present on the spot where accident took place. He narrated the entire incident and FIR was lodged in connection with this accident and charge-sheet was also filed corroborating the fact of rash and negligence driving of the driver of the vehicle bearing No.WB-23/2389.

In these circumstances, in my humble opinion, the learned Tribunal committed wrong in appreciating the evidence of P.W.2 in a case under this beneficial legislation.

In the aforesaid view of the matter, I find no scope to disbelieve the factum of death of Pravash Porel due to rash and negligent driving of the vehicle No.WB-23/2389.

So far as the income of the deceased is concerned, learned Advocate appearing on behalf of the claimants has referred to the provisional Trade Licence as well as the registration card-cum-receipt issued by the BSNL showing installation of phone in the grocery shop and thereby tried to make this Court understand that amount of income stated in the claim petition has been duly corroborated by the documents admitted in evidence.

Learned Advocate appearing on behalf of the Insurance Company has submitted that those two documents cannot prove the amount of income of the deceased at the time of death. According to him notional income of Rs.3,000/- per month should be taken for consideration.

After scrutiny of the claim petition and evidence of P.W.1 coupled with the provisional Trade Licence and registration Card –cum- receipt issued by the BSNL, I find no reason to disbelieve the fact that deceased used to deal in grocery and would earn Rs.5,000/- per month.

Keeping an eye to the principles laid down by the Hon'ble Apex Court, I determine the compensation as follows:-

Monthly Income = Rs.5,000/-

<u>Annual Income</u>

Rs.5,000 x 12 = Rs.60,000/-

- 1/3rd (Rs.20,000/-) = Rs.40,000/- + 40 % future prospect Rs.16,000/-

Total loss of annual dependency

= Rs.40,000/- + Rs.16,000/- = Rs.56,000/-.

Multiplier 17
(28 years) = Rs.9,52,000/-.

General Damages = Rs.70,000/-

Total compensation = Rs.10,22,000/-

Therefore, claimants are entitled to compensation to the tune of Rs.10,22,000/- along with interest @ 6% p.a. from the date of filing of the claim petition till the deposit of the sum before the office of the Registrar General, High Court, Calcutta, subject to payment of ad valorem Court fees.

Insurance Company is directed to deposit Rs.10,22,000/- along with interest @ 6% p.a. from the date of filing of the application till deposit of the sum before the office of the Registrar General, High Court, Calcutta, within six weeks from the date of this order.

Claimants are at liberty to withdraw the amount along with interest, subject to payment of deficit Court fees.

Learned Registrar General is requested to disburse the amount among the claimants in equal share.

The judgment passed by the learned Tribunal in MAC Case No.497 of 2005 stands set aside.

The instant appeal stands **disposed of** accordingly with a direction upon the department to send back original record along with a copy of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bibhas Ranjan De, J)