IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 1426 of 2014

With

CAN 1 of 2013 (Old CAN 11924 of 2013)

The National Insurance Company Limited

Vs.

Smriti Kana Saha & Ors.

For the Appellant/ Insurance Company :Mr. Sanjay Paul, Advocate
Mr. Anup Kumar Bag

For the Respondents/ Claimants :Mr. Md. Sabir Ahmed, Advocate

Hearing concluded on : November 09, 2022
Judgment on : November 15, 2022

Bibhas Ranjan De, J.

1. Accident occurred on 14.01.2008 at about 3.25 p.m., involving a car bearing vehicle number WB-73/3821(truck), insured with National Insurance Company Limited and a Tata Indica Car bearing number WB-74/L-2521. At the relevant point of time Haridas Saha (since deceased) was coming with Indica Car from Mathabhanga to Falakata while the aforesaid truck moving with high speed and rashly knocked the Indica car at Baro Soulmari PS Ghoksadanga, Dist. Cooch Behar. In effect Haridas saha succumbed to his injuries.

2. Legal representatives (wife and son) have filed the Motor Accident Claim Case No. 05 of 2009 under Section 166 of the Motor Vehicles Act, 1988, case on the file of the Motor Accident Claim Tribunal (Fast Track Court), Cooch Behar, claiming compensation of Rs. 18,50,000/-, under various heads. According to them, deceased aged 51 years, was an employee (manager) of M/s. Shiva Timber Concern and used to receive salary of Rs. 21,000/- per month.

3. Owner (opposite party number 1 & 2) contested the claim petition by filing their respective written statement denying all material statements of the claim petition contending inter alia that offending vehicle was insured under the National Insurance Company at the relevant point of time and they are not liable to pay any compensation. National Insurance Company Ltd. also contested by filing written statement denying all the statements regarding income of the deceased and his age contending inter alia that accident took place due to negligence of the victim himself.

4. To prove the manner of accident and income of the deceased, PW 1, wife of the deceased has adduced evidence. PW-2, is stated to be the eye witness. PW-3 & PW-4 adduced evidence with regard to income of the deceased at the time of death. On the side of the claimant, exhibit-1, formal FIR dated 26.09.2013, exhibit-2, written compliant dated 26.09.2013, exhibit-3, forwarding application dated 26.09.2013, exhibit-4, a bond certified copy dated 26.09.2013, exhibit-5, Insurance Policy, exhibit-6, Post Mortem report dated 26.09.2013, exhibit -7, income certificate, exhibit-8, authorisation letter, exhibit -9, pay register (column number 1 for the month of March, 2007), exhibit-10, pay register (column number 1 for the month of December, 2007), were admitted in evidence. On the side of M/s. National Insurance Company Ltd. no oral or documentary evidence has been adduced.

5. On evaluation of pleadings and evidence, Ld. Tribunal came to the conclusion that the driver of the truck bearing number WB-73/3821 insured with M/s. National Insurance Company Ltd., was negligent in causing the accident, ignoring the plea of contributory negligence. Accordingly, fastened liability on M/s. National Insurance Company Ltd., to pay compensation.

6. On quantum of compensation, PW-1 has adduced evidence that her husband/ deceased was an employee of Ms./ Shiva Timber Concern and used to receive salary of Rs. 21,000/- per month by producing salary certificate (exhibit-7) and pay registers (exhibit 9 and 10).

7. After going through the above documents and evaluating the evidence thereon Ld. Tribunal assessed Rs. 21,000/- income per month and after applying multiplier 11 in terms of age of the deceased finally assessed total compensation as Rs. 18,57,500/-.

8. It is needless to mention that strict proof of an accident by the involvement of the vehicles in a particular manner may not be possible to be done by the claimants. Claimants are merely to establish their case on the touch stone of preponderance of probability. Standard of proof beyond reasonable doubt is not at all applicable under this beneficial legislation. In our case, testing the finding fixing negligence on driver of the truck, on the aforesaid principle, I am of the view that oral testimony of PW-1 has been well supported by the eye witness, PW-2 duly corroborated by exhibit-1, First Information Report and exhibit-2, written complaint. On the contra, there is no evidence to indicate that M/s. National Insurance Company

Ltd., appellant herein has made any attempt to examine the driver of the truck, nor adduced any rebuttal evidence. In the absence of examining the driver, adverse inference has also been drawn. Even if I assume that accident took place owing to involvement of both the truck and Indica car, I am unable to hold that claimants should have impleaded with Insurance Company of the Indica Car, ignoring the choice of the claimants. Therefore, I find no reason to interfere with the observation of the Ld. Tribunal on the issue of liability M/s. National Insurance Company Limited.

9. M/s. National Insurance Company Limited preferred this appeal particularly on the ground of contributory negligence of both the truck and Indica Car and assessment of monthly income of the deceased, at the time of death. But, in course of argument, Ld. Advocate Mr. Sanjay Paul only contended on the point of income of the deceased. Referring to the evidence of PW-3 and 4 Mr. Paul has tried to convince this Court that pay register for the month of March and December, 2007 (exhibit 9 & 10) are not matching with the certificate (exhibit-7) issued by the employer (PW-3). Mr. Paul has further submitted that salary certificate reflects only two heads i.e monthly salary and travelling/Tiffin allowance, but on the other hand pay register reflects three heads viz. rate of wages, additional wages for over times and deduction. Thereby, Mr. Paul contended before this Court that documents were prepared for the purpose of compensation.

10. In opposition to that, on the issue of income, Ld. Advocate Mr. Md. Sabir Ahmed has argued that salary certificate shows the amount of total salary by two heads and pay register shows salary by three heads. Mr. Ahmed has further contended that there is no discrepancy between salary certificate and pay register regarding the total salary. Mr. Ahmed has further submitted that monthly salary of Rs.

21,000/- has been duly corroborated by PW-1 (wife of the deceased), PW-3 (employer of the deceased).

11. Before entering into the area of monthly income, I should bear in mind that in civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider niceties in a matter of claim case in as much as it is summary inquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the claims tribunal in deciding in Motor Accident Claim case.

12. In our case, claim petition reflects the monthly income of Rs. 21,000/- and that was corroborated by the wife of the deceased (PW-1) and employer of the deceased (PW-3). Not only that those oral evidences were further corroborated by the salary certificate (exhibit-7) and relevant page of the pay register (exhibit-9&10). Both the pay register and salary certificate show monthly salary of Rs. 21,000/- in favour of deceased Haridas Saha prior to accidental death. Mere discrepancies between salary certificate and pay register, in my opinion, does not make any difference with regard to quantum of salary received by the deceased. But, from the pay register it is found that Rs. 130/- was being deducted without assigning any reason in the register itself. Therefore, I am unable to accept any argument regarding deduction of tax or professional tax. For the sake of argument, if I assume that Rs. 130/- was deducted towards tax then the amount of deduction from the lesser salary received by other employees, as shown in the pay register, would have been much less than Rs. 130/- which was deducted from the salary of the deceased.

13. Therefore, I find no discrepancy in the assessment of award by the Tribunal.

14. With the above observation the appeal is dismissed, with a direction, to the Insurance Company, to deposit the entire award amount, before the Motor Accident Claim Tribunal/ Additional District Judge/ Fast Track Court, Cooch Behar within a period of six (6) weeks from the date. The Ld. Tribunal is requested, to disburse the amount only on proper identification and proof.

15. All pending applications, if any, stand disposed of accordingly.

16. Let the records of the Tribunal, be sent back at once.

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

[BIBHAS RANJAN DE, J.]