23.09.2022
SL No. 18 & 19
Court No. 654
Ali

F.M.A. T. 705 of 2021
IA No: CAN 1/2022, CAN/2/2022

The New India Assurance Co. Ltd.

versus

Smt. Rina Ghosh & Ors.

With

COT 52 of 2021

Mr. Sanjay Paul
...for the appellant.

Mr. Jayanta Kumar Mondal
...for the respondents-Claimants.

This appeal is directed against the judgement and award dated 30th September, 2021 passed by learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur in MAC case no. 133 of 2019 granting compensation to the tune of Rs. 26,10,329/-in favour of the claimant Nos. 1-3 and rejecting the claim of the claimant No. 4 together with interest @ 9% per annum from the date of filing of the claim application till realization under section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14.12.2018 at about 07.00 p.m. while the victim was proceeding from Talibhata (Ghatal) side towards Panskura side on foot by the left side of the Ghatal-Panskura metal road through the footpath and reached just before

Sultannagar, at that time one four wheeler bearing Registration No. WB-30K/0923 (Indigo CS) dashed the victim from the back side with great force, as a result the victim sustained grievous bleeding injury on his head and body and was shifted to the hospital where he died on the same night. The claimants being the wife, son and parents of the deceased filed claim application under section 166 of the Motor Vehicles Act, 1988 praying for compensation owing to sudden demise of the victim.

Upon consideration of materials on record and the evidence adduced on behalf of the claimants the learned tribunal allowed compensation to the tune of Rs. 26,10,329/-in favour of the claimant Nos. 1 to 3 and rejecting the claim of the claimant No. 4 together with interest @ 9% per annum from the date of filing of the claim application till realization.

Being aggrieved by and dissatisfied with the impugned judgement and award the appellant-insurance company has preferred the present appeal.

Mr Sanjay Paul, learned advocate appearing on behalf of the appellant-insurance company submits that the Insurance Company has filed the application precisely on singular count challenging quantum of income assessed by the learned tribunal. He submits that in order to establish the quantum of income save and except the Income Tax Return, the claimants have not filed any documents that the deceased used to carry on the business of the grocery under the name and style of *'Maa Shitala Bhandar'*. In view of the above submissions, he prays for setting aside the judgment and award passed by the learned tribunal.

In reply to the contentions raised on behalf of the appellant-Insurance Company, Mr. Jayanta Kumar Mondal, learned advocate for the respondents-claimants submits that the tribunal has rightly assessed the income of the deceased basing on the Income Tax Return of the deceased. In support he relied on the decision of this Hon'ble Supreme Court passed in ***Malarvizhi and Others versus United India Insurance Company Limited and Another*** reported in ***2020 (1) T.A.C. 328 (S.C.) ; Smt. Sangita Arya & Ors. versus Oriental Insurance Company Ltd. & Ors.*** reported in ***2020 SAR (Civ) 905; Amrit Bhanu Shali & Ors. versus National Insurance Co. Ltd. & Ors.*** reported in ***2012 SAR (Civil) 708*** and ***Kalpanaraj and Other versus Tamil Nadu State Transport Corporation*** reported in ***2014 (3) T.A.C. 707 (S.C.).*** Relying on such proposition of law, he submits that the argument advanced on behalf of the appellant-Insurance Company does not stand to reason.

Mr. Mondal, further submits that the claimants have filed cross-objection being COT 52 of 2021 praying for enhancement of the compensation amount on the ground that the learned tribunal did not consider the aspect of future prospect at the time of assessment of the compensation which as per the observation of the Hon'ble Supreme Court in***National Insurance Company Limited Versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** should be 25% of the annual income. He also submits that loss of consortium of Rs. 70,000/- should also be taken into consideration which the tribunal has failed to consider and more so with the passage of three years an amount equalling 10% of the general damages of 70,000/- may be added to the total amount under the conventional heads.

Mr. Paul, learned advocate for the appellant-Insurance Company submits that the observation of the Hon'ble Supreme Court passed in ***Pranay Sethi (Supra)*** be followed.

As far as the quantum of income is concerned which is the sole ground of the appeal, I find that the learned tribunal has taken into consideration the Income Tax Return for the assessment year 2018-2019 **(Exhibit 6/a)** and came to a conclusion that the annual income of the deceased is Rs.2,96,000/-.

Mr. Paul, learned advocate for the appellant-Insurance Company has thrown challenge to such finding of the learned tribunal on the ground that no document of business of the deceased has been produced by the claimants. At the first instance, on going through the details submitted alongwith Income Tax Return, the nature of business has been mentioned as income from grocery shop under the name and Style as *"Maa Shitala Bhandar"* at Sultannagar Market. The profit & loss account as well as the balance sheet submitted along with Income Tax Return also show *"Maa Shitala Bhandar"* as name of the shop and proprietor of the said concern is Dipak Ghosh (Deceased)herein. Thus the primary burden has been discharged by the claimants so far as the income of the deceased is concerned. No other evidence has been brought forth on behalf of the appellant-Insurance Company to discount the Income Tax Return submitted on behalf of the claimants.

I find substance in the submissions of Mr. Mondal, relying on the decision of Hon'ble Supreme Court passed ***Malarvizhi (supra); Smt. Sangita Arya (supra); Amrit Bhanu Shali (supra)*** and ***Kalpanaraj (supra)*** In view of the above discussion, there is no such irregularity or perversity in the finding of the learned tribunal regarding the annual income of the deceased to the tune of Rs. 2,96,000/-.

Accordingly, due to the aforesaid reasons the instant appeal is liable to be dismissed.

Now, I proceed to take up the grounds asserted in the cross-objection regarding the enhancement of the compensation amount.

Mr. Jayanta Kumar Mondal, learned advocate for the respondents-claimants argued that 25% of annual income towards future prospect and general damages as per observation of the Hon'ble Supreme Court made in ***Pranay Sethi (supra)*** is to be followed.

It appears from the judgment of the learned tribunal that future prospect has not been taken into consideration. Undisputedly the deceased at the time of death was 49 years of age. As per observation of the Hon'ble Supreme Court made in ***Pranay Sethi (supra)*** an amount of equalling 25% of annual income is to be taken into account towards future prospect.

The learned tribunal has awarded compensation under general damages to the extent of Rs.45,000/-. However, following the decision of Hon'ble Supreme Court in ***Pranay Sethi (supra)*** the general damage should be Rs.70,000/-(funeral expenses Rs. 15,000/- Loss of Estate Rs.15,000/-, Loss of consortium Rs.40,000/-) and 10% of the general damages be also taken into consideration. The multiplier of 13 as well as the deduction towards personal living expenses of the deceased of 1/3rd has been rightly assessed by the tribunal.

In the aforesaid backdrop, the compensation amount is calculated hereunder:

Calculation of Compensation

Annual income Rs.2,96,000/-

Add: Future Prospect 25% .... Rs. 74,000/-

Rs. 3,70,000/-
Less: 1/3 for personal living expenses... .Rs. 1,23.333
Rs 2,46,667/-

Adopting Multiplier 13........... (Rs. 2,46,667/- X 13)

Rs. 32,06,671/-

Add: General Damages Rs.77,000/-
Loss of consortium......Rs.44,000/-
Loss of Estate Rs.16,500/-
Loss of Funeral Rs.16,500/-
(10% escalation after three years)

Total compensation Rs. 32,83,671/-

It is informed that no amount has been received by the claimants. Thus the claimants are entitled to compensation amount to the tune of Rs 32,83,671/- along with interest @ 6% from the date of filing of the claim application till realization.

The appellant-insurance company shall deposit the aforesaid amount by way of cheque with the learned Registrar General, High Court, Calcutta within six weeks from date. Upon deposit of the said amount the learned Registrar General, High Court, Calcutta shall release the amount in favour of respondent-claimant nos. 1-3 in the same proportion mentioned in the order of the learned tribunal upon satisfaction of the identity of the claimants.

Appellant-insurance company is granted liberty to withdraw the statutory deposit of Rs. 25,000/- and any other accrued interest, if any.

With the aforesaid observation the appeal is dismissed and the Cross Objection being **COT 52 of 2021** is allowed and disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Department is directed to register a FMA no. against this FMAT.

Let a copy of this order be sent to the learned tribunal for necessary information.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on complying all necessary legal formalities.

(Bivas Pattanayak J.)