08.09. 2023
item Nos.27 & 28
n.b.
ct. no. 551

FMA 557 of 2014

Uday Narayan Ghosh
Vs.
Oriental Insurance Co. Ltd.
With
FMA 664 of 2003
+
IA No. CAN 2 of 2003(Old No. CAN 4594 of 2003)
+
CAN 3 of 2004(Old No. CAN 3001 of 2004)

Oriental Insurance Co. Ltd.
Vs.
Uday Narayan Ghosh

Mr. Saibal Acharyya,
Mr. Ambu Bindu Chakraborty,
Ms. Mrinmoyee Roy Chowdhury,
.....for the appellant (In FMA 557 of 2014)
.... for the respondent(In FMA 664 of 2003)
Ms. Gopa Das Mukherjee,
.....for the respondents(In FMA 557 of 2014)

Both the appeals are preferred by the Insurance Company and the claimants against the same judgment and award dated August 21, 2001 passed by the learned Judge, Motor Accident Claims Tribunal, 11th Court, Alipore in M.A. C. case No. 114 of 1998.

The brief fact of the case is that the claimant is a practicing advocate of Alipore District Judges' Court, South 24 Parganas. On 17.05.2007 while he was running from Kolkata to Ultadanga by a car at the time to save a goat standing over Eastern Metropolitan Byepass, the vehicle turned left and dashed a tree. The claimant is sitting beside the driver, sustained severe injuries including fractured dislocation over left hip joint and waist causing permanent disablement. The claimant filed application under Section 166 of the Motor Vehicles Act for getting compensation.

The Insurance Company contested the claim by filing written statement; the evidences and the documentary evidence were adduced/produced before the learned Tribunal. Learned Tribunal after perusing the entire evidence on record both oral and documentary evidence as awarded sum of Rs.6,06,879/-.

Being aggrieved by and dissatisfied with the impugned award, the present Insurance Company have preferred appeal(FMA 664 of 2003)for setting aside the impugned award and the claimant has preferred the appeal(FMA 557 of 2014) for enhancement of the award.

Learned advocate appearing for the claimant submitted that the learned Tribunal has passed the impugned award without considering the materials on record. The income of the claimant was specifically proved by adducing sufficient evidences. Before the accident, the claimant was practicing advocate at Alipore. He dad a degree of local Survey, he is a Notary Public and also a Marriage Registrar. By such he used to earn rupees more than Rs.3 lakh before the accident. The Income Tax Return was submitted wherein the professional fees of the claimant was stated at the end of 31st March, 1997 to be Rs.3,17,708/-. Prior to this year, the income and expenditure account was submitted with the income tax department, which is ended on 31st March, 1996 is Rs.2,33,606/-. He again argued that after the accident the income of the claimant has been drastically reduces. He again argued that if the claimant has not suffered the accident, he would have earned more. He also argued that Learned Tribunal has perused the Income Tax Return submitted by the claimants but as assessed the income of the claimant only Rs.1,22,850/- per annum. The observation of the learned Tribunal to that effect is totally erroneous. He prayed for just and proper compensation on the basis of yearly income of the deceased Rs.3,17,708/-.

Learned advocate appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal suffers no illegality. Being a professional man, he may have earned more than Rs.3,00,000/- but the profession of a lawyer invite some expenses, which has been specifically mentioned in the expenditure column. The assessment of Income Tax Return file prior to the accident shows his net profit of business is Rs.1,22,850/-. Such net profit was adopted by the learned Tribunal. So, the learned Tribunal has committed no error in fixing the income of the claimant to Rs.1,22,850/-.

Heard the learned advocates and perused the materials on record and also perused the exhibit- 5, 5/A and the relevant income and expenditure account submitted by the claimant prior to the accident. It appears that the income tax return shows for the assessment year 1996-97, the profit of the business is Rs.1,22,850/-. The profit shows for the assessment year 1997-98 Rs.1,35,555/-. The income and expenditure chart attached with the income tax return shows the different expenditures including office rent, telephone charge, convenience charge etc. The income tax return is a return which is self-assessment of the assessee. The assessee/claimant has assessed his income, which is self-assessment and the self-assessment expenditures shows several expenditure. In considering the income of a person(being a lawyer), who is claimant before the learned Tribunal under Section 166 of the Income Tax Act, the heads towards the different expenditures calculated by him(self assessee) need be looked into to assess his actual income.

In my view, the professional tax, convenience charge, charge for purchasing books and periodical charge including salary of the staff should be deducted from his gross income. The income of a lawyer cannot be possible without such expenditures. Considering the same, the income of the claimant in this case should be Rs.2,30,000/- par annum.

In considering the observation of the Hon'ble Supreme Court in **Pranay Sethi** the claimant is also entitled to get future prospects, which would be 25% of his established income. The claimant was within the age group of 45 to 50 year at the time of accident, so, the applicable multiplier in this case would be 13. It further appears to me that the learned Tribunal has awarded a sum of Rs.5,000/- towards the pain and suffering. In this case, it appears to me that the claimants sustained injuries and for which he was admitted to the hospital. Some painful operation was held at his leg including the head. For such operation, he sustained permanent disablement. Considering the same, I think it is necessary for non-pecuniary damages; the claimant is entitled to get Rs.50,000/- by virtue of Hon'ble Supreme Court in **R. D. Hatangardi.** The claimant is also entitled to get Rs.50,000/- more towards his future treatment.

Considering the entire aspect, I think it is necessary that the award passed by the learned Tribunal need be modified. The yearly income disclosed above as Rs.2,30,000/-. 25% of future prospect should be added with the said income. So, Rs.57,500 is added with Rs.2,30,000/- The yearly total income comes to Rs.2,87,500/-. Functional possibility is calculated 38%. So, after considering such functional disability; the award comes to Rs.1,09,250/-. Applicable multiplier is 13. So after aplying the multiplier, the award comes to Rs.14,20,250/-. The Tribunal has awarded Rs.50,000/- towards medical expenses. He is also entitled to get Rs.50,000/- towards nonpecuniary damages and

Rs.50,000/- towards future prospect. So after adding all head the award comes to Rs.(14,20,250/-+50,000+50,000 +50,000)=Rs.15,70,250/-.

The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application i.e. from February 19, 1998 within eight weeks from the date of passing of this order with the officer of the Learned Registrar General, High Court Calcutta.

It appears from the record that the Insurance Company has deposited Rs.25,000/- vide OD challen no.2589 dated 15.1.2003, the sum deposit must have carried some interest. The claimant is at liberty to withdraw the same along with interest. The Insurance Company is directed to deposit the balance amount of Rs.15,70,250-25,000) =Rs.15,45,250/- along with interest as mentioned herein above. On such deposit, the claimants are at liberty to withdraw the same subject to ascertainment of payment of requisite court fees.

Accordingly, FMA 557 of 2014 & FMA 664 of 2003 are disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)