IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

06.12.2023
SL No.40
Court No. 551
Ali

FMA 370 of 2023
With
IA No.:CAN/1/2023

The Oriental Insurance Co. Ltd.
Vs.
Mamata Maity & Ors.

Ms. Sucharita Paul
.... for the appellant.

Mr. Jayanta Banerjee,
Mr. Sandip Bandhopadhay,
Mr. Argha Bhattacharjee
...for the respondents/claimants.

Affidavit of service filed on behalf of the appellant/insurance company is taken on record.

In Re.: CAN 1 of 2023

Learned advocate for the insurance company submits that in pursuance to the order of this court dated 17th April, 2023, the insurance company have deposited the entire awarded sum less statutory deposit.

No such noting is reflected in the record.

Ms. Sucharita Paul, learned advocate appearing on behalf of the insurance company has handed over the original copy of OD Challan. It reveals that the insurance company has deposited the entire awarded sum amounting to Rs. 40,53,837/- vide OD Challan No. 369 dated 04.05.2023.

Considering the compliance made on behalf of the insurance company, the interim order of stay passed by this Court on the earlier occasion is herby made absolute and be extended till the disposal of the instant appeal.

Department is directed to take note of the deposit in the record itself.

The respondent Nos. 1, 2 & 3 has already made their appearance through the learned advocate Mr. Jayanta Banerjee.

The learned advocate for the parties submit that the presence of the owner of the offending vehicle is not required for the disposal of the instant appeal. Moreover, the learned advocate for the appellant submits that the appeal can be disposed of on consultation of the impugned award itself.

Accordingly, the appeal is taken up for hearing.

In re.: FMA 371 of 2023

The instant appeal has been preferred against the Judgment and Award dated 5th November, 2022 passed by learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur, in M.A.C. Case no. 254 of 2019 under Section 166 of the Motor Vehicles Act.

The brief facts of the case is that the present respondent/claimants have preferred an application before the learned tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 33,97,500/- in favour of the claimants alongwith interest @ 6% per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award the instant appeal has been preferred by the Insurance Co.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that there are only three grounds in preferring the instant appeal by the Insurance Company. Firstly: the route permit of the offending vehicle was not seized and the learned tribunal has not considered the matter and passed the impugned award. If the offending vehicle has plied beyond the route permit, the Insurance Company may not be liable to pay the compensation.

Secondly: the learned tribunal has awarded 50% of the actual income of the deceased to be the future prospects according to the decision of the Hon'ble Supreme Court passed in **Pranay Sethi** but the deceased was not in permanent job so in this case the future prospects would be 40%. He further argued that the Exhibit-11 discloses that the deceased was appointed as a General Duty Attendant at Sabang Rural Hospital vide Order No.. CMOH/Pas. Mid/Gr.-D/448. He produces the copy of the Notification and the Government Memo dated 18.01.2019. He places the order of appointment wherein the appointment in favour of the deceased was passed which is completely provisional and temporary. By citing such Government Order, she submits that in this case the future prospects would be 40%.

It appears that the route permit was not seized during the course of investigation of the criminal case. However, the insurance company has not taken any steps and/or produces any evidence to show that the offending vehicle was plied beyond route permit. Considering the same, the argument of insurance company regarding the route permit is turned down.

Learned advocate appearing on behalf of the respondents submits that the deceased was in Government service and just after two months of his appointment. He succumbed to his injuries by such fateful accident. However, he submits that the appointment is yet to be matured.

Heard the learned advocates perused the exhimt-11 also perused the copy of memo dated

18.01.2019. It is true that all the Government service is initially made provisional and/or temporary and they are likely to be permanent; but in true speaking the service in which the deceased was appointed is actually provisional and temporary in nature at the time of alleged accident. So in this case, the future prospects would be 40% instead of 50% by virtue of direction of Hon'ble Supreme Court passed in **Pranay Sethi**. It further appears that the learned tribunal has awarded a sum of Rs. 1,21,000/- (Rs.88,000/-+ Rs. 16,500/-+Rs. 16,500/-) towards the general damages. In this case, the general damages would be at best (Rs. 70,000/- + 20%) according to the decision of Hon'ble Apex Court. So the assessment of the general damages of the learned tribunal is appears to me erroneous.

Considering the all aspects, it appears to me that the award passed by the learned tribunal needs modification.

The just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Monthly Income be assessed as........Rs.16,060/-
2. Less: P Tax.................................... -Rs.130/-
   Rs.15,930/-
3. Annual Income (Rs. 15,930 X 12).....Rs1,91,160/-
4. Add: 40% Future Prospects.............Rs.76,464/-
   Rs.2,67,624/-
5. Multiplier 17 X 17
   Rs. 45,49,608/-

6. Less: 1/3rd Rs. 15,16,536/-

Rs. 30,33,072/-

5. Add: General Damages ....Rs. 84,000/-

Compensation.......... Rs. 31,17,072/-

After calculation the award comes to Rs. 31,17,072/-. The insurance company is directed to pay the awarded amount alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 21.06.2019 within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the same amount as per direction of the learned tribunal subject to ascertainment of payment of requisite court fees.

It appears that the insurance company has already deposited the entire awarded sum alongwith interest; the office of the learned Registrar General High Court, Calcutta shall disburse the amount to claimants, after such disbursement, residue if any, in the account shall be refunded to the insurance company on usual terms.

LCR if received send down immediately to the learned tribunal.

The instant FMA 370 of 2023 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)