01.09.2023
SL No.3
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 620 of 2009

Rajen Halder
Versus
The National Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
...for the appellant-claimant.

Mr. Rajesh Singh
....for the insurance Co.

The instant appeal is preferred against the judgment and award dated 29th April, 2006 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Alipore, 24-Parganas (South) in MAC Case No. 28 of 2004 under Section 163-A of the M.V. Act.

The brief fact of the case is that the present appellant being the claimant filed one application before the learned tribunal under Section 163-A of the M.V. Act for getting compensation on the ground that the present claimant has sustained grievous injuries due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company-respondent.

The learned advocate for the appellant submitted before this court that the impugned award passed by the learned tribunal suffers illegality. The learned tribunal has considered the income of the deceased to be notionally to be Rs. 15,000/- per annum which is erroneous. The appellant was a fish seller and used to earn Rs. 3,000/- per month so his income cannot be computed Rs.15,000/- per annum. He also argued that the 50% of the compensation was deducted towards the loss of earning capacity of the petitioner which was calculated by the Government Hospital by issuing a handicapped certificate. He also argued that the learned tribunal has also committed error by deducting 50% of the compensation on the ground that the another vehicle was involved who was not made party in the claim case. He argued that the learned tribunal should not have deducted further 50% on the ground of involvement of the other vehicle. He again argued that the instant application was filed under Section 163-A of the M.V. Act which would be decided on the principle of "no fault liability". In this proceeding, the claimant should be given the compensation without fixing the liability to any person responsible for the accident. He also submitted that the claimant is also entitled to get some more compensation on the ground of medical expenses, towards which learned tribunal has given only Rs. 2,000/- so he prayed for just and proper compensation.

Learned advocate appearing for the insurance company raised strong objection and submitted before this court that the impugned award passed by the learned tribunal is not illegal in the eye of law. However, he contended that the law is very much clear to the effect that in case under Section 163-A of the M.V. Act the principle to determine the matter "no fault liability" and in that matter the rash and negligent driving and fixing the liability to the vehicles is unknown. So he submitted that the just and proper compensation of this case may be awarded.

In considering the judgment of Hon'ble Division Bench of this High Court passed in ***Smt. Bilasini Mondal Versus National Insurance Company Limited and Another*** reported in ***2003 (2) T.A.C. 435 (Cal.)*** it appears that in ***Smt. Bilasini Mondal*** a fish seller was claimant wherein the Division Bench of this Court has calculated the compensation by considering the income of that deceased/claimant to be Rs.3,000/- per month. In this case the claimant is also a fish seller, so the observation of the Ho'ble Division Bench of this Court be safely adopted here So, in adopting such view in this case the income of the claimant can be assessed to be Rs. 3,000/- per month.

On that score, the just and proper compensation of this case is as follows:-

<u>Calculation of compensation</u>

1. Monthly Income ………………………….Rs.3,000/-

2. Annual Income (Rs.3,000/- X 12)......Rs.36,000/-
3. As per age of the victim
   multiplier would be 11 (11 X 36,000)...Rs.3,96,000/-
4. 50% loss of income........................Rs.1,98,000/-
5. Grievous Injury **(Pranay Sethi)**..........Rs.5,000/-

   Total Rs. 2,03,000/-

6. Add: Medical Expenses Rs.2,000/-

   Compensation Rs,2,05,000/-

7. Less awarded by Tribunal & paid.......Rs. 44,750/-

   Enhancement........................Rs. 1,60,250/-

The insurance company is directed to pay the balance amount of compensation amounting to Rs. 1,60,250/- alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 03.03.2004 within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to receive the same on the prevalent Rules.

The instant FMA 620 of 2009 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.)