IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

21.08.2023
SL No.7
Court No. 551
Ali

F.M.A. 933 of 2009

Smt. Sila Topwar @ Toppo & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
……for the appellants-claimants.

Mr. Parimal Kumar Pahari
………..for the respondent no. 1-insurance Co.

The instant appeal has been preferred against the judgment and award dated 30th May, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Track, Fast Court, Alipurduar, Jalpaiguri in MAC Case No. 70 of 2005.

The brief fact of the case is that the present appellants being the claimants preferred an application before the learned tribunal under Section 163(A) of the M.V. Act for getting compensation on the ground that their predecessor was died in a road traffic accident due to involvement of the vehicle duly ensured under the policy of the respondent insurance company.

The learned tribunal has heard the matter and awarded a sum of Rs. 89,750/-toward the claimants as compensation. The claimants are the appellants before this court for getting just compensation.

Learned advocate for the appellants-claimants submitted before this court that the impugned award passed by the learned tribunal is erroneous. The learned tribunal has wrongly assessed the income of the deceased notionally to be Rs. 15,000/- per annum. The deceased was a Tea Garden employee and he used to earn at least Rs.2,000/- per month. The learned tribunal must have considered the evidences on record to assess the compensation of the instant case. He also argued that the learned tribunal is of opinion that two vehicles are involved in the alleged accident thus the 50% of total accounted compensation was only awarded. The learned tribunal has erroneously observed that the owner or insurer of other vehicle who were not impleded in this case are liable to pay the 50% of the compensation. Learned advocate for the claimants-appellants further argued that the view of the learned tribunal has not at all correct. The claimants may have field a claim application before the learned tribunal but the learned tribunal must have award the compensation to the third party-claimant from any of the insurer and on that score the insurer may recover the same from the other insurer. He further argued that the learned tribunal was made an error in passing the impugned order thus it is liable to be set aside.

Learned advocate for the insurance company submitted before this court that from the evidence on record it would be revealed that two vehicles were involved in the alleged accident. There was a head on collision thus both the vehicles are jointly and equally responsible for the accident. The learned tribunal has considered the fact and correctly directed that the 50% of the compensation may be paid by the Oriental Insurance Co. Ltd. and other 50% may be paid by the other insurer. The learned tribunal has acted on the submission of the claimants and passed the impugned award; there is no error in passing the said award. He also argued that the learned tribunal has categorically observed that no scrap of paper was filed regarding the income of the deceased thus the income of the deceased was considered notionally to be Rs.15,000/- per annum. There is no justification to interfere with the impugned award. He prayed for dismissal of the appeal.

Heard the learned advocate perused the materials on record on considering the income of the deceased it appears to me that the claim application was filed by the claimants who are the legal heirs of the deceased stating the income of the deceased to be Rs. 2,000/- per month and from his occupation of permanent Tea Garden employee. It is the submission of the learned advocate for the claimants that the deceased had at least the income of Rs. 2,000/- per month. He also argued that the deceased and his family members belong to the poor community, it is not possible to carry or possess necessary income proof document; so he prayed for the income of the deceased may be calculated Rs. 2,000/- per month. The evidence of PW-1 was observed wherefrom it appears that she also stated in her examination-in-chief that her son used to Rs. 2,000/- per month towards the salary. It is true that there are no scraps of document to prove the income. Accident of this case was occurred in the year-2002. In the year 2002, the income of an able bodied person was not less than Rs. 70/- per day. The deceased was Tea Garden permanent employee. Accordingly, his daily income must not be less than Rs.70/- per day. Thus, the income of the deceased can be considered Rs. 2,000/- per month. In that score the observation of the learned tribunal is appears to me erroneous.

It also appears from the impugned award that the claimants are allowed to receive the 50% of the compensation from the insurance company i.e. Oriental Insurance Co. Ltd who is the respondent in this matter. The learned tribunal is also of the view that the other owner/insurer of the vehicle i.e. the Scooter is also equally responsible for the accident. For that reasons, the compensation in this case has to be shared equally. The learned tribunal is of view that due to non-joinder of necessary parties the 50% of the compensation was not given to the claimants. The view of the learned tribunal is appears to me not correct in view of the present directives of the laws enunciated by the Hon'ble Apex Court. It is the settled law that the third party claimants are at liberty to prefer an application for compensation against either of the parties when more than one vehicle is involved in accident. On that score, the vehicle made party in a proceeding is liable to pay the entire compensation and the compensation has to be recovered by the insurance company from the other owner of the insurance company according to percentage of the negligence by preferring a separate proceeding.

Considering the same, I find that the impugned award passed by the learned tribunal need be modified.

For just and proper compensation of this case the income of the deceased is calculated Rs. 2,000/- per month, the yearly income comes to Rs. 24,000/-. 1/3rd of which is deducted towards the personal expenses of the deceased thus the yearly dependency comes to Rs. 16,000/-. At the time of accident the deceased was 25 years. The applicable multiplier of this case would be 17, so after multiplying the multiplier the award comes to Rs.2,72,000/-.

The claimants are also entitled to get Rs.9,500/- towards the general damages after adding the general damages the award comes to Rs. 2,81,500/-. The claimant has already received the awarded compensation of Rs. 89,750/-. So the balance amount comes to Rs. 1,91,750/-.

The insurance company is directed to pay the compensation to the claimants alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 14.07.2005 within eight weeks through the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the same from the office of the learned Registrar General, High Court, Calcutta according to the prevalent rules subject to the ascertainment of payment of requisite court fees.

The office of the learned Registrar General, High Court, Calcutta is directed to issue the compensation in favour of the claimants vide three equal account payee cheques.

The respondent-Oriental Insurance Co. Ltd. is 50% liable to pay the compensation and other 50% of the compensation must have to be paid by the other owner or insurer of the another offending vehicle (Scooter).

The Oriental Insurance Co. Ltd. is hereby directed to pay the entire compensation of which they are at liberty to recover the 50% of the compensation from the owner/insurer of the vehicle bearing No. WB 70/4519 involved in the accident through a separate proceeding

The instant FMA 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.)