

13.07. 2023
item No.7
n.b.
ct. no. 551

FMA 459 of 2011

with

IA No. CAN 1 of 2011(Old No. CAN 539 of 2011)

+

CAN 2 of 2013(Old No. CAN 2079 of 2013)

+

CAN 3 of 2013(Old No. CAN 2080 of 2013)

Smt. Anjali Chowdhury & Ors.

Vs.

The New India Assurance Co. Ltd. & Anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Ruxmini Basu Roy,
..... for the appellants.
Ms. Gopa Das Mukherjee,
.... For the respondent.

The instant appeal has been preferred against the judgment dated 29.11.2008 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Jalpaiguri in M.A. C. Case No. 139 of 2006 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that the present appellants are the claimants before the learned Tribunal, who filed the claim application under Section 166 of the Motor Vehicles Act, 1988 on the ground that their predecessor namely, Bidhan Chaudhury died in a road traffic accident on February 20, 2006. This is the contention of the claimants that the said deceased was the police constable, who employed under the Directorate of

Police, Government of West Bengal having monthly salary of Rs.10,184/-.

Learned Tribunal has considered the case of the claimants and allowed the compensation to the claimants amounting Rs.8,14,720/-

The instant appeal has been preferred only on the ground that the learned Tribunal has assessed the compensation erroneously. Learned Tribunal has considered the multiplier of this case to be 10, but according to the direction of the Hon'ble Supreme Court passed in **Sarala Verma** considering the age of the deceased (48 years) the applicable employer would be 13. He also argued that the future prospects and general damages as directed by the Hon'ble Supreme Court in **Pranay Shetty** was also not considered by the learned Tribunal.

Learned advocate for the Insurance Company submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. The learned Tribunal has considered the materials on record and passed the impugned award in favour of the claimants. There is no perversity in the order passed by the learned Tribunal. Thus, it is not required to be modified or set aside the order of the learned Tribunal.

Heard the learned advocates and perused the materials on record. It appears from the record that the learned Tribunal has considered the income of the

deceased on the basis of the Exhibit 12 i.e. the service book as well as the Exhibit 13 i.e. pay slip. It appears that multiplier was adopted in this case to be 10 by virtue of judgment passed by the Hon'ble Supreme Court reported in AIR 2003 SC 2095 but the law has been changed by virtue of the direction of the Hon'ble Supreme Court in **Sarala Verma**. Thus, the applicable employer case would be 13.

In considering the future prospects and general damages, it appears to me that the Hon'ble Supreme Court has laid down in **Pranay Shetty** that all pending applications and appeals, the claimants are entitled to get the future prospects and general damages. So, in this case as the deceased was within the age group of 40 to 50 with the permanent job, of 30% of his salaried income would be added as future prospects. The claimants are also entitled to get the general damages to the tune of Rs.70,000/-.

Considering the entire circumstances, the impugned award passed by the learned Tribunal is modified. Thus, the compensation of this case is as follows:-

Accordingly, the order of Tribunal is hereby modified are recasted hereunder.

1. Annual Income be assessed as Rs. 10,184 X 12=	1,22,208
2. Add future prospect 30%	= 36,662.4
3. Less 1/3 deduction on account of personal Expenses.	= - 52,965.8
4. Multiply 13	= 1,05,913.6
5. Add General Damages (70,000)	= 13,76,876.8
	+ 70,000
	14,46,876 .8
6. Ld. Tribunal Granted Awarded amount of Rs. (	- 8,21,720

7. Balance enhanced amount = 6,25,1571

The balance amount shall carry 6% interest per annual from the date of filing of the claim application (5.6.2006).

The insurance company is directed to pay the balance amount with accrued interest through the Office of the Registrar General, High Court, Calcutta within the eight weeks from the date of passing of this order.

Accordingly, FMA 459 of 2011 is 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.)