08.08.2023
SL No.13
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 207 of 2011
IA No.:CAN/1/2014 (Old No.:CAN/8047/2014
CAN/2/2023

Smt. Basiran Bibi & Anr.
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
……for the appellants-claimants.
Mr. Rajesh Singh
……….for the respondent-insurance Co.

The instant appeal is preferred against the judgment dated 21st day of May, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 12th Court, Alipore, 24-Parganas (South) in MAC Case No. 2 of 2006 under Section 166 of the M.V. Act.

The brief facts of the case is that the claimants being the fateful parents have filed the application before the learned tribunal for getting compensation on the ground that their son aged about 20 years had died in a road traffic accident. The matter was contested by the insurance company by filing written statement.

The learned tribunal has heard the parties perused the oral and documentary evidences adduced by the claimants also heard the arguments and after hearing the same learned tribunal has awarded an amount of Rs. 1,34,500/- in favour of the claimants. Being aggrieved by the award, the claimants are here for enhancement of the compensation.

It is the argument on behalf of the claimants-appellants that the learned tribunal has committed error by assessing the compensation on the basis of notional income of the deceased to be Rs. 15,000/-. He argued that the deceased was one of the employee by a Steel Factory who used to earn Rs.3,500/- per month. The employer i.e. the owner of the Steel Factory appeared before the learned tribunal as PW-2 and deposed that the deceased used to earn Rs.3,500/- per month. He argued that the present claimant being the fateful parents of the deceased entitled to get the compensation according to the income to the tune of at least Rs.3,000/- per month.

Learned advocate for the insurance company raised strong objection and submitted before this court that the employer appeared before the learned tribunal as PW-3 who deposed during the cross examination that he has filed one Tax Return before the IT department showing the labour charges during the relevant year to the tune of Rs.34,940/-. In considering the same the income of the deceased cannot be taken to be Rs.3,500/- per month. He also argued that he document filed by the claimants through PW-3 was duly exhibited and the document cannot be discarded at this juncture. Learned tribunal has considered those documents and was of view that the notional income of the victim would be treated Rs.15,000/- per annum. Thus there is no infirmity or perversity in the finding of the learned tribunal.

Heard the learned advocates perused the materials on records it appears that the income of the deceased victim was stated to be Rs.3,500/- per month. The employer appears before the learned tribunal as PW-3 who, during his examination-in-chief has stated that he used to gave Rs. 3,500/- to the victim as a labour of his factory. The document was marked as Exhibit-8. The salary certificate was marked as Exhibit-9 showing the salary of the deceased to be Rs.3,500/- per month. During his cross examination he stated that he filed the return to the IT department wherein he showing the payment the labour charge to be Rs.34,940/- for the relevant year. He also stated that he had one mistry and two labour in the relevant year, during his cross examination he also stated that he used to pay daily wages of Rs. 60-65 the helper and 130 towards the labour. Thus it appears that the PW-3 has filed two sets of documents wherein one sets of document shows that the income of the deceased to be Rs.3,500/- and another set it appears that the income of the deceased cannot be Rs. 3,500/-. Learned tribunal after considering both the materials has abruptly taken the notional income of Rs. 15,000 P.A. It appears to me that the learned tribunal should have come to the specific finding regarding the specific income of the deceased when there are certain documents of the income of the deceased though the documents are contradictory in nature. The learned tribunal must have computed or calculated the income on the basis of those documents.

The income certificate i.e. the exhibit-9 shows the deceased Rs. 3,500/- per month and the Saral which was filed to the IT department of the said employer shows the payment towards the labour is Rs. 34,940/-. The income sheets as well as the income and expenditure sheets filed with this Saral (2D) is perused. It appears that the monthly expenses including the labour charges and staff welfare charges appears to Rs. 49,750/-. Specific labour charge was mentioned as Rs.38,500/-. The staff welfare charge has to be added with this amount. Thus considering the same it appears to me that the income of the deceased should not be less than Rs.90 per day. The age of the deceased is 20 years at the date of accident so the applicable multiplier of this case would be 18. The claimants are also entitled to get the future prospects according to the direction of the Hon'ble Apex Court in ***Pranay Sethi*** i.e. 40% to be added with this income. The claimants are also entitled to get the general damages would be Rs. 30,000/-. As the claimant deceased was a bachelor, the deduction towards personal expenses would be 50%; so after considering the entire matter the award passed by the learned tribunal is hereby modified.

The income of the deceased comes to Rs. 90 per day. The monthly income comes to Rs.2,700/- the 40% of which is added towards the future prospect Rs.1,080/- so after adding the future prospect the monthly income of Rs.3,780/- 50% of which is deducted from his personal expenses thus the monthly income dependency comes to Rs.1,890/- yearly income comes to Rs.22,680/-. The applicable multiplier is 18. The calculation is as follows:-

1.Monthly Income Rs.2,700/-

2. Add 40% future prospect.........................Rs.1,080/-
Rs.3,780/-

3. Less 50% personal declaration................Rs. 1890/-

4. Yearly income Rs22,680/-

5. Multiplier apply 18
(Rs.22,680/- X 18)......Total Rs...................Rs.4,08,240/-

6. Add: General damages..........................Rs.30,000/-
Rs.4,38,240/-
Received already awarded...........Rs. 1,34,500/-
Balance.......................................Rs. 3,03,740/-

The insurance company is directed to pay the balance amount of Rs. 3,03,740/- alongwith interest @ 6% per annum from the date of filing of this case i.e. from 23.12.2005 within eight weeks through the office of learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the amount subject to the ascertainment of payment of requisite court fees.

The CAN 2 of 2023 filed by the claimants is hereby allowed.

The name of the appellant no. 2 is directed to be corrected by the department according to the para 2 of the CAN application.

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.)