

10.08. 2023

item No.8

n.b.

ct. no. 551

FMA 342 of 2010

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IA No. CAN 1 of 2013(Old No. CAN 5392 of 2013)

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CAN 2 2017(Old No. CAN 3130 of 2017)

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CAN 3 of 2023

Kanak Samanta & Ors.

Vs.

The New India Assurance Co. Ltd. & Anr.

Mr. Krishanu Banik,

Mr. Tathagata Banik,

.....for the appellant.

Mr. Kartick Kr. Bhattacharya,

Ms. Soumashree Dutta,

.... For the respondent.

The instant appeal has been preferred against the judgment dated 25th day of July, 2008 passed by the learned judge, Motor Accident Claims Tribunal, 4th Court, Paschim Medinipur in M.A. C. Case No. 438 of 2007 under Section 166 of Motor Vehicles Act.

The brief fact of the case is that the present appellants being the claimant filed the application before the learned Tribunal for getting compensation under Section 166 of the Motor Vehicles Act on the ground that that their predecessor namely, one Uttm Samanta was died in a road traffic accident. The owner of the offending vehicle did not contest the matter but the Insurance Company contested the case before the learned Tribunal by filing written statement.

The claimants adduced the witnesses including other documentary evidences before the learned Tribunal.

Considering the evidences on record and considering the submission of the learned advocate for the respective parties, the learned Tribunal has awarded sum of Rs.1,50,000/- in favour of the claimants. Being aggrieved by and dissatisfied with that order of the instant matter has been preferred.

Learned advocate for the appellant submitted before this Court that the learned Tribunal has awarded the minimum compensation on the ground that the deceased has contributed the said accident to the portion of 50%. He submitted before this Court that the observation of the learned Tribunal in respect of the alleged accident and the contributory negligence on the on the part of the deceased is erroneous. The submitted that the entire facts of the case does not suggest that the involvement of the deceased to the contributory negligence on the basis of the Post Mortem report. The Post Mortem report does not disclose any such material by which the learned Tribunal can observe such finding.

He argued that the learned Tribunal has erroneously come to the conclusion of this case and there is miscarriage of justice. He prayed for a just and proper compensation on behalf of the appellants.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. Learned Tribunal has successfully come to a finding that the injuries sustained by the injured is disputed. He also argued that the learned Tribunal on the basis of the evidences on record and on the basis of specific cross-examination of opposite party come to the finding that the deceased wanted to catch up the Tractor and at that time, he fell down on the front of the Tractor. He also pointed that the observation of learned is quite correct in perusing the specific injury over the belly of the deceased.

P.W. 2 appearing before the learned Tribunal to be an eye witnesses, but he stated that no bleeding injury was caused to the deceased, though, it is a fact that the deceased was run over by the Tractor over his belly. On that score, he submitted that impugned award passed by the learned tribunal is justified and there is no scope for interference.

Learned advocate for the appellants in support of his contention cited some decisions of Appex Court passed in ***Smt. Suvarnamma & Anr. Vs. United India Insurance Company Ltd. & Anr.*** wherein the Hon'ble Supreme Court is of view that the deposition of Divisional Manager of the Insurance Company regarding the cause of accident being the victim was

passenger of the Tractor cannot necessary to be proved by wiping out all the evidences on record on behalf of the claimants. He also cited the decision of ***Sanchita Biswas Vs. Divisional Manager, National Insurance Company Ltd.*** wherein the Hon'ble Supreme Court has observed that the Tribunal has committed an error by observing on the presumption and by disbelieving the entire evidences on record of the claimants.

In considering the impugned judgment, it appears to me that the learned Tribunal has observed that the contributory negligence can be appeared from the post mortem report of the instant case. On perusing the post mortem report, it appears that the post mortem report contain in column no.6 regarding the inquest report of the deceased; the inquest report of the deceased is stated to be that the deceased was fell down and received major injury. The learned Tribunal has found stitches over the belly of the deceased and come to a conclusion that such stitches must have some bleeding injuries resulted run over under wheel of Tractor. I could not find any observation of the doctor in the post mortem report regarding the cause of the stitches over the belly of the deceased.

In considering the fact and circumstances of the case, I am of the view that the learned Tribunal has come to a conclusion that it is the case of run over by

the Tractor but it is surprising how the learned Tribunal has calculated contributory negligence on behalf of the deceased. It appears to me that the learned Tribunal has misguided himself in deciding the issue before him and the observation of the learned Tribunal is on the basis of assumption and it needs to be set aside.

Further, it appears that the learned Tribunal has assessed the compensation only a lump sum basis, which also appears to be erroneous.

The Motor Vehicles Act as well as the direction of Hon'ble Supreme Court formulated that in every compensation case should be disposed of according to the structure formula. In this case, after considering the evidence on record and after considering the impugned judgment, I am of the view that the impugned judgment needs to be set aside.

The appeal is allowed.

Impugned award passed by the learned Tribunal is set aside.

The just and proper compensation of this case is hereby recasted as follows:

The monthly income of the deceased was stated to be Rs.90 per day being a day labourer. Learned advocate for the Insurance Company submitted that no document was filed to that effect. It is the general norms and practice of this Court that when accident

was happened before 2010 and if there is no convincing document of income, this court adopted income of the deceased to be Rs.100/- per day i.e. Rs.3000/- per month. In this case the claim of the appellants to be daily of Rs.90/- appears to be justified. The claimant is also entitled to get the future prospects of 40% of established income, according to the observation of the learned Apex Court passed in **Pranay Shetty** and the claimants being 4 in number, the deduction of the personal expenses of the deceased would be 1/4th. Considering the age of the victim is mentioned in post mortem report to be 28 years but the claim application stated the age to be 33 years. Thus, considering the same, the age of the deceased to be calculate within age group of 31 to 35; applicable multiplier is a 16. The claimants are also entitled to get general damages of Rs.70,000/-. Thus the award of compensation is as follows:

1. Monthly income be assessed as	Rs.2,700/-
2. Annual income be assessed as	Rs.32,400/-
3. 40% Future Prospect	Rs.12,960/-
4. Total	Rs.45,360/-
5. 1/4 th Deduction (45360-11,340)	Rs.34,020/-
6. Use of multiplier as per age of 16	Rs.5,44,320/-
7. General Damages	Rs.6,14,320/-
8. Less awarded amount	Rs.4,64,320/-

So, the award comes to Rs.4,64,320/-, the Insurance Company is directed to pay the

compensation along with 6% interest per annum. from the date of filing of the claim application i.e. from 21.8.2007 within 8 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 liberty to withdraw the same according to the prevalent rules subject to the ascertainment of payment of requisite Court Fees.

In Re. CAN 3 of 2023

The instant application is filed by the appellant regarding the fact that the appellant nos. 2 and 3 became the major.

The above application is considered and allowed with a direction that the department shall made out necessary correction in the Memo of the Cause Title of the appeal within a fortnight.

Accordingly, FMA along with all pending connected applications are 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.)