IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

30.08.2023
SL No.7
Court No. 551
Ali

F.M.A. 267 of 2012
IA No: CAN/1/2017 (Old No.:CAN/5203/2017)

Rekha Bibi
Vs.
The Manager, Bajaj Allianz General Insurance Co. Ltd. & Ors.

Mr. Saidur Rahaman
……for the appellant-claimant.

Mr. Indradip Das,
Ms. Sristi Roy
……….for the respondent No. 1 insurance Co.

The instant appeal is preferred against the judgment and award dated 18th May, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Malda in MAC Case No. 184 of 2009 under Section 163-A of the M.V. Act.

The present appellant being the claimant preferred an application before the learned tribunal under Section 163-A of the M.V. Act for getting compensation from the insurance company on the ground that the son of the claimant No. 1 was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle. The claim case was contested by the insurance company before the learned tribunal.

The learned tribunal after hearing the parties and after recording the evidences thereon has awarded a sum of Rs.1,64,500/- towards the compensation and directed the present contesting respondent herein to pay the 75% of the said compensation and rest 25% has to be paid by the owner of the other offending vehicle i.e. pick-up van.

Being aggrieved by and dissatisfied with the impugned award the present appellant has been preferred or enhancement of the award.

Learned advocate for the appellant submitted before this court that the impugned award passed by the learned tribunal considering the income of the deceased to be notionally to be Rs. 15,000/- per annum is erroneous. The learned tribunal should have considered the claim application wherein the income of the deceased was stated to be Rs.2000/- per month. The deceased was a Khalasi of the pick-up van so in the year 2009 his income was not less than Rs. 2,000/-. The learned tribunal has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. So, he prayed for just and proper compensation considering the income of the deceased to be Rs. 2,000/- per month.

Learned advocate appearing on behalf of the Bajaj Allianz General Insurance Co. Ltd has submitted before this court that the learned tribunal has passed the award correctly. The learned tribunal in deciding the issue Nos. 3 and 4 has categorically observed that the present deceased was not at all Khalasi in the pick-up van at the time of accident.

He pointed out the evidence of PW-1 wherein the mother of the deceased has been specifically stated that her son including the other two persons where travelling through the pick-up van and they were boarded at Malda. Learned advocate for the insurance company also pointed out the FIR wherein the presence of three persons in the pick-up van was mentioned. He argued that the observation of the learned tribunal on the basis of such finding is very much correct and cannot be denied in this appeal.

Heard the learned advocate perused the materials on record in considering the submission of the learned advocate for the appellant it appears to me that the instant claim application was filed stating the deceased to be the Khalasi of the pick-up van. The learned tribunal has observed that the owner of the pick-up van has never appeared instead he was made party in this proceeding. Learned tribunal is also of the view that the materials on record shows that the deceased was not the Khalasi. After hearing the submission of the learned advocate for the insurance company, it appears to me that the observation of the learned tribunal in respect of the occupation of the deceased and income thereof is not at all bad. There is no perversity in the impugned award in respect of the observation of the leaned tribunal regarding the occupation and income of the deceased. Actually, there are no materials before the learned tribunal for which he hold the notional income of the deceased to be Rs. 15,000/- per annum according to 163-A of the M.V. Act. However, I find no merit on that respect.

The tribunal has adopted the multiplier of 16 on the basis of the age of the PW-1 i.e. the claimant No. 1 (mother of the deceased), the approach of the learned tribunal to assess the compensation on the basis of multiplier adopted on the basis of age of the parents of the deceased is not correct. The multiplier should be assessed according to the age of the deceased. From the certificate of birth filed before the learned tribunal of the deceased it appears that the date of birth of the deceased is 3rd September, 1985. The accident was happened on 27th May, 2009. Thus, the deceased was within the age group of 21-25 at the time of accident; so in this case the multiplier should be 17 instead of 16. It is further observed that the compensation was divided between two insurance companies in the ratio of 75% to 25%. Admittedly, the owner and insurer of the pick-up van did not appear in this proceeding so according to the observation of the Hon'ble Supreme Court the third party should not be suffered to get the compensation from the non-contesting owner but it is the observation of the Hon'ble Supreme Court in different occasion that the contesting insurer shall have to pay the entire compensation and they shall recover the portion of compensation as assessed by the tribunal from the other owner or the insurer of the vehicle through a separate proceeding. Considering the same, I think it necessary to modify the award passed by the learned tribunal

For just and proper compensation of this case; the annual income of the deceased was calculated to be Rs.15,000/- per month. 1/3rd is deducted to his personal expenses so the yearly dependency comes to Rs.10,000/- per annum, the applicable multiplier in this case is 17. After multiplying the multiplier the award comes to Rs.1,70,000/-,the general damages added Rs. 4,500/-so after adding the general damages the award comes to Rs. 1,74,500/-.

The claimant has already received the award amounting to Rs.1,23,375/- so the balance amount comes to Rs.51,125/-.

The contesting Bajaj Allianz General Insurance Co. Ltd. is directed to pay the balance compensation amounting to Rs. 51,125/- alongwith interest @ 6% per annum from the date of filing of the claim application 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 claimants are at liberty to receive the same according to the prevalent rules.

It is ordered that the contesting respondent i.e. Bajaj Allianz General Insurance Co. Ltd. is at liberty to recover the 25% of the compensation amount from the owner or the insurer of the pick-up van duly involved in the said accident through a separate proceeding.

The instant FMA 267 of 2012 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.)