IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

17.07.2023
SL No.5
Court No. 551
Ali

FMA 184 of 2014
With
COT 67 of 2013

Mira Mondal & Anr.
Vs.
National Insurance Company Ltd. & Anr.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sarkar Chatterjee,
Ms. Rajashree Tah,
Ms. TYrisha Rakshit
…………… for the appellants-claimants.

Mr. Sanjay Paul
…for the respondent-insurance Co.

The instant appeal is preferred against the judgment and order dated 24th March, 2011 passed by learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan in M.A.C. Case no. 16/28 of 2009.

The brief facts of the case is that on 30th December, 2008 the victim was going to the market through the left side of old Burdwan-Bankura Road at the time the offending truck bearing No. WGQ-1276 which was coming in a high speed and in negligent manner dashed the victim from behind for which he sustained severe injuries and died at the spot. On such accident, the parents of the victim filed a claim application before the learned tribunal.

The learned tribunal after considering the application as well as the evidences on record allowed the claim application in favour of the claimants-appellants and directed the insurance company to pay the compensation amounting to Rs.3,37,300/- alongwith interest @ 6% per annum from the date of filing of the claim case.

The insurance company has also filed one cross appeal against the said judgment which is taken up together alongwith this appeal.

The appellant-claimant has only one ground before this appellate court. It is the sole ground of the appellant that learned tribunal has not considered the income of the deceased. The income of the deceased was erroneously calculated by the learned tribunal by fixing the daily income of Rs.100/-. He further pointed out that the learned tribunal at the time of assessing the compensation is of view that the income of the deceased victim would be Rs. 2,600/- per month which was erroneous. He submitted before this court that the claim application was filed showing the income of the deceased to be Rs. 3,300/- as a mason. PW-2 was deposed before the learned tribunal and submitted that the victim was a mason, so considering the same the income of the deceased cannot be assessed Rs.2,600/- per month.

Learned advocate for the insurance company submitted before this court that the learned tribunal has committed no error in determining the income of the deceased in this case. He further pointed out that no document of proof of income was produced. No employer was adduced before the learned tribunal thus the income of the deceased was correctly considered by the learned tribunal.

Heard the learned advocate perused the materials on record it appears that the deceased was a mason by profession and his income was stated Rs.3,300/- though no specific document was produced or no employer was adduced before the learned tribunal but it appears to be that the deceased died in the year 2008.

By virtue of the decision passed by this court and in several occasions. Wherein it is the practice of this court to adopt the notional income of the deceased who died prior to 2010 is Rs.3,000/- in the absence of any particular document to that effect. Thus in this case, the income of the deceased can be assessed Rs. 3,000/- per month. Considering the same the impugned award passed by the learned tribunal is hereby modified. Thus, the just and proper compensation of this case is hereby recasted as follows:-

Calculation of compensation

Monthly Income be assessed as............Rs.3,000/-
Less 1/3rd Rs.1,000/-
Rs. 2,000/-

3. Annual Income be assessed as
...(Rs.2,000/- X 12)............ Rs.24,000/-

4. Multiplier 16
(Rs.24,000/-X 16)....................................Rs.3,84,000/-

6. Add: General Damages......................<u>Rs.4,500/-</u>
Rs. 3,88,500/-
6. Less: Award already received.........<u>Rs.3,37,300/-</u>
Balance compensation.......... Rs. 51,200/-

The insurance company is directed to pay the balance amount alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from January 29, 2009 within eight weeks from the date of passing of this order through the office of learned Registrar General, High Court, Calcutta. On such deposit the office of learned Registrar General, High Court, Calcutta shall disburse the balance amount alongwith accrued interest, if any, to the claimants-appellants according to prevalent rules.

The instant FMA alongwith COT 67 of 2013 are 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.)