21.08. 2023
item No.47
n.b.
ct. no. 551

FMA 3017 of 2016

With

IA No. CAN 3 of 2017(Old NO. CAN 4991 of 2017)

+

CAN 4 of 2023

Udayan Bouri

Vs.

The New India Assurance Company Limited & Anr.

Mr. Amit Ranjoy Roy,
.... For the appellant.
Ms. Gopa Das Mukherjee,
.... For the respondents.

In Re. CAN 4 of 2013

This is an application filed by the claimant for amendment/correction of his name in the 'Adhar Card' as well as in the PAN Card. The name of the claimant is stated there in as "Uday Bauri". Let the name of the appellant be corrected accordingly.

The department to do the correction within a fortnight.

The Instant appeal has been preferred against the judgment and award dated March 12, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Suri, District Birbhum in M.A. C. Case No. 164 of 2007.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal under Section 166 of the M.V . Act for getting compensation on the ground that the predecessor of the claimant was died in road traffic accident due to rash and negligent driving of offending vehicle duly insured under the policy of the Insurance Company. The claim case was contested by the Insurance Company.

The learned Tribunal heard the matter and after hearing the parties, learned Tribunal has awarded a sum of Rs.6,75,100/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award the claimant has preferred this appeal for enhancement of the award.

The sole ground of the appeal is the income of the deceased as assessed by the learned Tribunal in awarding the compensation was not correct.

Learned advocate for the appellant submitted before this Court that the deceased was the permanent employee of Eastern Coal Field Limited and used to earn more than Rs.10,000/- per month. The income of the deceased was very well proved by submitting documentary evidence as well as the oral evidence. Learned Tribunal after perusing the pay slip as well as the salary statement considered the income of the deceased on the basis of the net payment. The observation of the learned Tribunal regarding the income of the deceased completely erroneous. He submitted before this Court that the learned Tribunal has considered the income of the deceased regarding the last month of pay i.e. February 2006. Wherein the gross pay was mentioned in the exhibit 8 to be Rs.10,163 and neat pay was mentioned as 6,401/-. Learned Tribunal has considered the income of the deceased on the basis of neat pay i.e Rs.6,400/-. The assessment of income of the deceased on the basis of the neat income is completely erroneous. The income of the deceased considering the compensation of this case should be on gross income less the tax component. He further argued that Hon'ble Supreme Court in the case of **Bimal Kanwar & Ors. Vs. Kishor Dan & Ors** has observed that income of the deceased should be his gross income less the tax component. He has made calculation regarding the average of gross pay for the month of March 2005 to February 2006 less the tax component which appears to be Rs.10,659/-. He submitted that the income of the deceased should be considered at least Rs.10,000/- per month.

Learned advocate for the Insurance Company raised strong objection and submitted before this Court that the learned Tribunal has committed no error in passing the impugned award. The neat income of the deceased was taken to be considered for the assessment of compensation. There is discrepancy in the documents filed by the claimant before the learned Tribunal. While the person appearing on behalf of the Eastern Coal Field Limited stated the designation of the deceased to be welder but the pay slip was prepared regarding the income of the a welder labour. She also submitted that the pay of the deceased was being paid on the basis of the attendance. So, at this juncture, the neat income of the deceased should be calculated as a monthly income.

Heard the parties and perused the records and the observation of the Hon'ble Supreme Court passed in **Bimal Kanwar**, I have also perused the exhibits 7,8,9. It is true that the deceased was a permanent employee of Eastern Coal Fields Limited and Eastern Coal Fields Limited has submitted a salary statements salary certificate of the deceased i.e. marked as exhibit 8. Exhibit 9 is a pay slip, which is the computer generated slip and it does not require any signature. The exhibit 8 shows the gross pay of the deceased from March 2005 to February 2006. The salary statement also mentioned the neat payment. Clarification of gross pay and neat pay has been specifically mentioned in the exhibit 9. The component towards the Provident Fund, Pension Scheme, Family Pension Scheme was deducted from the gross salary including the professional tax. So, in calculating the income of a deceased the component from provident Fund, Family Pension and other deposits regarding the Pension Scheme shall not be deducted only the tax component has to be deducted; from the gross pay according to the direction of Honble Supreme Court in **Bimal Kanwar**. So, in my view, the observation of the learned Tribunal regarding the fixing the monthly income of Rs.6,400/- is erroneous. After averaging the gross income of the deceased from March 2005 to February 2006 less the tax component is monthly income appears to be Rs.10,659/-. So, in this case, it is prudent to considered the income of the deceased for the assessment of compensation is Rs.10,000/- per month. In that score, the impugned award passed by the learned Tribunal need be modified.

The sole claimant is the son of the deceased and during the pendency of the instant appeal, the wife of the deceased has expired and his name was deleted from the memo of the cause title of the appeal. Thus, the claimant is entitled to get the future prospect and general damages according to the direction of the Hon'ble Supreme Court passed in **Pranay Shetty.**

Considering the entire observations the just and proper compensation of this case is recusted as follows:

1. Monthly income	Rs.10,000/-
2. Annual income (12,000 X 12)	Rs.1, 20,000/-
3. Deduction 1/3rd (-)	Rs.80,000/-
4. Add 30% Future Prospects	Rs.24,000/-
Total	Rs.1,04,000/-
5. Multiplier 13 (Rs.1,04,000X13)	Rs.13,52,000/-
6. General Damages (+)	Rs. 30,000/-
	Rs.13,82,000/-
7. Already received amount	Rs. 6,75,000/-
Total Balance	Rs. 7,09,900/-

The Insurance Company is directed to pay the balance compensation along with 6% interest per annum from date of filing of this case i.e. from November 29, 2007.

The Insurance Company is directed to pay compensation within eight weeks from the date of passing of this order with the office of the Registrar General, High Court, Calcutta.

Accordingly, FMA 3017 of 2016 is disposed of.

Connected all applications, if any, are also 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.)