16
jks 28.07.2023

FMA 1394 of 2015
With
CAN 1 of 2022

Smt. Sumitra Sha & Anr.
Vs.
National Insurance Company & Ors.

Mr. Krishanu Banik
Mr. Tathagata Banik
Ms. Jaita Ghosh
... ... for the appellants

Mr. Saswata Bhattacharya

... ... for the respondents

In Re: CAN 1 of 2022

Heard the learned advocate for the appellants CAN 1 of 2022 disposed of with direction that the appellant no.2 has become major. Thus the necessary noting be made at the memo of the appeal by the concerned department within a fortnight. It further appears that the name of the of the appellant no.2 is appearing in the Aadhar Card as well as PAN Card as “Prianshu” instead of “Priansu” so the department is also directed to make the necessary corrections in the cause title of the memo of the appeal.

The instant appeal is preferred against the judgment dated 25th February, 2014 passed by the learned Judge, Motor Accident Claim Tribunal, 2nd Court, Hooghly in MAC Case No.33 of 2012. The claimants are the appellants here. The brief facts of the case is that the claimants filed an application before the learned Tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor died on a road traffic accident on 2nd August, 2011. The insurance company contested the case by filing written statement. The claimants have produced the oral and documentary evidences before the learned Tribunal. Learned Tribunal after hearing both the parties passed the award in favour of the claimants amounting to Rs.1,79,500/-. Now the appellants are before this Court for enhancement of the award.

Learned advocate for the appellants submitted that learned Tribunal has not considered the evidence on record and the impugned award passed by the learned Tribunal is erroneous. He pointed out the claim application stated the income of the deceased to be 13,000/- per month which was not considered. The occupation of the deceased was supply of labour for which one co-employer appeared before the learned Tribunal deposed as PW-2. Learned Tribunal has not considered the evidence of the PW-2 and calculated the compensation by fixing the yearly income of the deceased notionally to be Rs.15,000/- per year.

Learned advocate for the appellants further submitted before this Court that the income of the deceased should be calculated at least Rs.4,000/- per month. He prayed for just compensation.

Learned advocate for the insurance company raised strong objection and submitted before this Court that the impugned award passed by the learned Tribunal suffers from no illegality. The impugned award was passed by the learned tribunal after considering the evidences and materials on record. He again pointed out that there is no documentary evidences regarding the proof of income of the deceased. Thus the learned Tribunal has assessed the income on the basis of the notional income as provided under the provisions of MV Act. He also pointed out that learned Tribunal has committed no error and passed the speaking order. Thus there is no chance to interfere.

Heard the learned advocates. Perused the materials on record. It appears to me that the monthly income of the deceased in the claim application stated to be Rs.13,000/-. Wife of the deceased appeared before the learned Tribunal as PW-1 who deposed regarding the income of the deceased Rs.10,000/-. No documentary evidence is produced during the trial. It appears to me that to prove the income of the deceased there were no documents before the learned Tribunal. Stray oral evidences were laid before the learned Tribunal.

However, in considering the judgment of several High Courts as well as Apex Court passed in Pronay Shetty and Sarala Verma the notional income of the deceased should be calculated when there are no cogent and reasonable evidence on record to be Rs.3,000/- per month.

It is the practice of this Court that in absence of any reliable documentary evidence regarding the income of a deceased under Section 166 of MV Act who were died in road accident from the 2011 to 2014 the monthly income notionally assessed as Rs.4,000/- per month. This view is adopted by this Court in several occasions. Thus I find it necessary to adopt same view. In this Case the income of the deceased should be calculated as Rs.4,000/- per month. It appears that learned Tribunal also not considered the future prospects and the general damages in this case. Thus in this score by virtue of the judgment of the Hon'ble Apex Court in Pronoy Shetty the appellants are entitled to get compensation towards the future prospects and general damages. Considering the entire aspects it appears to me that the impugned award passed by the learned Tribunal need to be modified.

Hence, the just and proper compensation in this case is as follows:

Monthly Income be assessed as	Rs. 4,000/-

Annual Income be assessed as (Rs.4,000/- X 12)		Rs.48,000/-
Future Prospect be assessed 40% i.e.		Rs.19,200/-
		Rs.67,200/-
1/3rd Deduction (67,200-22,400)		Rs.44,800/-
Multiplier as per age	16 (Rs.44,800/-X 16)	Rs.7,16,800/-
General damages		Rs.70,000/-
Total		Rs.7,86,800/-
Less awarded amount		Rs.1,79,500/-
		Rs.6,07,300/-

The respondent insurance company is directed to pay the balance amount of compensation amounting to Rs.6,07,300/- to the claimants along with 6 per cent interest per annum from the date of filing of the claim application (from 21st February, 2012). The impugned award has reflected that Rs.50,000/- if given to the claimants under Section 140 has to be deducted from the amount of compensation. The same direction be exist accordingly. The insurance company is directed to pay the balance compensation with the office of the Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. On such deposit the claimants are at liberty to withdraw the same according to the prevalent Rules subject to the ascertainment of payment of requisite Court fees.

It appears that by virtue of the direction of the Tribunal the appellant no.1 has deposited the award amount in a Nationalised Bank so that the they may utilised by the minor claimant. As the claimant has got majority so the claimant no.2 is at liberty to use the same.

The instant FMA is disposed of

All connected applications, if any, stand disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)