35 with 36
26.04.2023
Ct. No.237
Suvayan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 785 of 2012
with
IA No. CAN 1 of 2013 (CAN 8474 of 2013)
with
IA No. CAN 2 of 2017 (CAN 4489 of 2017)
With
FMA 1896 of 2014

Smritilekha Pore & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Krishanu Banik
... For the appellants/claimants.

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

The claim petition under Section 163(A) of the Motor Vehicles Act arose out of an accidental death of one Rekha Pore @ Sikha Pore on 07.11.2007 at about 2.30 p.m. when she was returning from Balasore to West Bengal by a tourist bus bearing No. WB11A/1388. When that bus reached near Godikhala bridge on NH 60 another truck bearing No. OR01-G-8352 coming from Balasore side dashed the tourist bus. As a result the victim Rekha Pore @ Sikha Pore died on spot. At that time of death she was dealing in cloth having income of Rs. 3,300/- per month.

Legal heirs of deceased filed the claim application with the prayer for compensation to the tune of Rs.3,00,000/-.

The said tourist bus was duly insured with the New India Assurance Company Limited who was made party in the claim petition. Insurance company contest the application by filing the written statement denying all statements of the claim petition contending, inter alia, that claimants are not entitled to compensation from the insurance company.

On behalf of the claimants, one Kousik Bhadra Pore was examined as P.W. 1 who corroborated the entire contents of the claim petition. During corss-examination several suggestions were thrown to the witness who denied those suggestions regarding accidental death of Reka Pore @ Sikha Pore and about her income. In course of evidence of P.W. 1 the good numbers of documents were admitted, namely, certified copy of charge-sheet, dead body challan, postmortem report, insurance policy and voter identity card.

Learned Motor Accident Claim Tribunal (Additional District & Sessions Judge, Fast Track 3rd Court, Tamluk Purba Medinipur) disposed of the application under Section 163A of the Motor Vehicles Act registered as Motor Accident Claim Case No. 54 of 2009/Motor Accident Claim Case No. 34 of 2008 after reevaluating the evidence on record. Learned Tribunal assessed the income of the victim as Rs. 15,000/- per annum and after applying multiplier 13 the total compensation was assessed at Rs. 1,34,500/-.

Feeling aggrieved, claimants preferred the appeal being FMA 785 of 2012 disputing the assessment of monthly income of the deceased by the Tribunal and also for not allowing consortium.

On the other hand on behalf of the insurance company one appeal has been preferred being FMA 1896 of 2014 on the ground that learned Tribunal directed the insurance company to pay the compensation and to recover the amount from the owner of the bus as victim was a gratuitous passenger of the said bus. In the appeal preferred on behalf of the insurance company, it was contended that insurance company not at all liable to pay any compensation and, therefore, question of recovery does not arise.

Mr. Krishanu Banik, learned Advocate appearing on behalf of the appellants/claimants has submitted that income of the victim was assessed by the Tribunal at Rs. 15,000/- per annum instead of Rs. 3,000/- per month as notional income. Mr. Banik, has further submitted that though victim was first wife of the claimant No. 3, the award towards consortium cannot be denied.

Per contra, Mr. Rajesh Singh, learned Advocate appearing on behalf of the insurance company has submitted that admittedly the victim was a gratuitous passenger and there was no insurance coverage for victim. Accordingly, insurance company is not liable to pay any compensation to the legal representative of the victim.

So far as the accident is concerned no argument has been advanced before this Court. Accidental death of Rekha Pore @ Sikha Pore has been proved by the claimants by adducing evidence of P.W. 1 supported by documents, viz., certified copy of charge-sheet, dead body challan, postmortem report, insurance policy and voter identity card. That apart this is an appeal arose out of a claim petition under Section 163A of the Motor Vehicles Act where proof of rash and negligence driving has no role to play.

Only issue in this appeal with regard to the income of the victim at the time of death. From the evidence on records, I do not find any specific evidence in support the income of the victim, therefore, notional income of Rs. 3,000/- should be assessed as monthly income of the victim at the time of death. With regard to consortium claim petition itself disclosed the fact that claimant No. 3, that is, husband of the victim used to reside with his second wife prior to the accident and there was no relationship between the victim along with her husband, son and daughter.

Considering the disclosure statement in the claim petition, I do find any reason to interfere with the observation of the learned Tribunal in support of disallowing consortium in favour of the claimants.

However, in aforesaid facts and circumstances, I would like to re-assess the compensation as follows:

Annual Income	Rs. 36,000/-
Less 1/3rd deduction (Personal Expenses)	Rs. 12,000/-
	Rs. 24,000/-
Multiplier by 13 (as per Second Schedule)	X 13
	Rs.3,12,000/-
Add General damages	Rs. 4,500/-
Total compensation	Rs.3,16,500/-
Less: Already deposited in the High Court	Rs.1,34,500/-
ENHANCEMENT	Rs.1,82,000/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.3,16,500/-. It is reported that the awarded amount of Rs.1,34,500/- was deposited by the insurance company before the Office of the learned Registrar General.

Accordingly, the New India Assurance Company Limited is liable to pay balance amount of Rs.1,82,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st January, 2008 till the actual deposit of the amount before the office of the learned Registrar General of this Court. Insurance company is also directed to pay the interest @ 6% per annum of the amount of Rs. 1,34,500/- which was already deposited before the office of the learned Registrar General of this Court from the date of filing of the claim petition till the date of deposit.

Accordingly, the New India Assurance Company Limited is directed to deposit the entire balance amount of Rs.1,82,000/- along with interest within six weeks from date.

The New India Assurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the tourist bus bearing registration No. WB11A/1388, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in AIR 2004 SC 1630 : (2004) 13 SCC 244.

The appellants/claimants are entitled to withdraw the total compensation amount with interest and accrued interest.

The learned Registrar General is requested to disburse the entire amount with interest and accrued interest to the appellants/claimants in equal share on proper identification and proof.

With the above observations, the appeals, being FMA 785 of 2012 stands disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)