23.08. 2023
item No.36
n.b.
ct. no. 551

FMA 2293 of 2016
with
IA No. CAN 1 of 2015(Old No. CAN 10780 of 2015)
+
CAN 3 of 2017(Old No. CAN 7114 of 2017)
+
CAN 4 of 2021

National Insurance Co. Ltd.
Vs.
Rashmi Kumari & Ors.

Mr. Saibalendu Bhowmik,
.....for the appellant.
Mr. Krishanu Banik,
.... For the respondent.

The appeal has been filed by the Insurance Company. Being aggrieved by and dissatisfied with the judgment and award dated March 26, 2015 passed by the learned Judge, M.A.C. Tribunal, 2nd Court, Burdwan in M.A.C Case No.04/379 of 2013/2012.

The brief fact of the case is that the present respondent/claimant filed one application before the learned Tribunal under Section 166 of the M.V. Act for getting compensation from the Insurance Company on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured by the Insurance Company/appellant. The owner of the offending vehicle has not contested the matter before the learned Tribunal but the Insurance Company has contested the claim case by filing written statement.

After hearing the parties, the learned Tribunal has awarded the compensation amounting to Rs.71,95,815 in favour of the claimants. The Insurance Company is before the Appellant Court against the said award.

Learned advocate for the Insurance Company argued before this Court that the fact of the accident would show that two vehicles were involved in the alleged accident. The Insurance Company has pleaded before the learned Tribunal by filing written statement that the deceased was driving a Motor Cycle in a rash and negligent manner and he dashed the Tata Sumo Car and died in the road traffic accident.

He submitted that the learned Tribunal has not considered the matter, thus, the observation of the learned Tribunal is erroneous. The deceased himself contribute the accident, so, some part of the compensation should be deducted towards the negligence of the deceased in the said accident.

He also argued that the income of the deceased was taken to be Rs.29,000/- per month but the document of income was not exhibited before the learned Tribunal. They were not properly produced or not legally proved. He argued that the pay slip issued by the State Bank of India of the concerned Branch including Form 16 and Form 12BA were not properly proved. The contents of the document cannot be considered at this stage as the contents of the documents were not specifically pleaded before the learned Tribunal. He also argued that the perquisites amounting to Rs.73,221/- was added with the income of the deceased annually. The chaiments never pleaded such income on perquisites in their claim application but after producing the evidences, the learned Tribunal has considered the said perquisites to be the part of the compensation. The observation of the learned Tribunal to that effect is erroneous.

He also argued that the claimant has failed to prove the rash and negligent driving of the offending vehicle. It would be evident from FIR that the FIR was lodged to the concerned police station with the unknown number of offending vehicle. After investigation, the police had submitted charge sheet containing the number of the offending vehicle to be (Tata Sumo) bearing registration no. WB 42H-4846. There are no materials where from the police has collected the number of the vehicle. He argued that the police have been manipulated by the claimants to frame the Tata Sumo in this case. The alleged offending vehicle Tata Sumo was not at all involved in the alleged accident. He argued that the learned Tribunal has adopted the general damages in this case to be Rs.2,25,000/- which is erroneous by virtue of decision of the Hon'ble Supreme Court passed in **Pranay Shetty**.

On the above score, he argued that the claimants have failed to prove case before the learned Tribunal.

Thus, the impugned order passed by the learned Tribunal is liable to be set aside.

In support of his contention he has cited a decision reported in **(2003)8 SCC 740** on the principle that when pleadings and evidences are at variance to each other such evidences cannot be relied upon.

Learned advocate for the claimant/respondent submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. The deceased was the Manager of State Bank of India and the claimants are the legal heirs of the deceased including wife, two sons and the mother. He argued that the income of the deceased taken to be Rs.29,000/- per month on the basis of the pay slip. Pay slip is the system generated document, thus, it does not require any signature or proof. The future prospect @50% was adopted as per view of the Hon'ble supreme Court passed in **Pranay Shetty.** It is correct that there are dependent number more than three, so, $1/4^{th}$ was correctly deducted towards the personal expenses of the deceased. He admitted that the general damages as awarded by the learned Tribunal in this case is erroneous, it should be Rs.70,000/- instead of Rs.2,25,000/-. He again argued that the Hon'ble Supreme Court in several decisions has specifically pointed out that the income of salaried person should be assessed on the basis of gross income, lessthe tax component. The perks and other perquisites including the fund/credit by the deceased during his monthly income towards HRA, CCA, GPF etc. cannot be deducted.

In support of his submission he has cited the decision of Hon'ble Supreme Court passed in **Sunil Sharma & Ors. Vs. Bachitar Singh , Raghubir Singh & Ors. Vs. Hari Singh** and **National Insurance Company Ltd. Vs. Indira Srivastav.**

On that score, he submitted that there are no illegality in the impugned order, so it need be maintained.

Heard the learned advocates, perused the materials on record. The involvement of the offending vehicle(Tata Sumo) in this case is verified. It true that the FIR was lodged in the police station on the self-same day of accident(30.12.2010) containing no number of offending vehicle. The informant of the FIR, one of the Bank officials, who actually was not an eye witness of the accident. On the basis of the FIR, Burdwan Police Station case No.917 of 2010 dated 30.12.2010 was initiated; police took up the investigation of this case. During the investigation, the police has examined available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure. On the basis of their statement, police has came to know that offending vehicle is (Tata Sumo) bearing registration no.WB 42H-4846 which dashed the victim due to rash and negligent driving of the driver of the offending vehicle. The driver was arrested on February 8, 2011 and he was produced before the learned Chief Judicial Magistrate, Burdwan vide a forwarding memo. Seizure was effected to that effect regarding the offending vehicle. After completion of investigation, police has submitted charge-sheet on February 24, 2011 under Section 279/304A/427 of IPC against the driver of the offending vehicle.

It appears that during the course of investigation, the damaged Hero Honda Motor Cycle driven by deceased was seized including the Tata Sumo Car. Police is of the opinion by submission of the charge-sheet that the Tata Sumo Car is responsible for the accident. One of the charge-sheeted witnesses appeared before the learned Tribunal as P.W.2. The P.W. 2 was witnesses of the accident.

Learned advocate for the Insurance Company argued that the distance between P.W. 2 and the accident spot was 100 ft. From such distance, it was not possible for the P.W.2 to locate the number of the offending vehicle.

In considering the said argument, it appears to me that the accident happened in broad day light and the distance of 100 ft. is not so far to see the manner of accident. The Insurance Company also did not produce any witnesses either oral and documentary evidence which case contradict the prima facie fact of accident as stated by P.W.2 as well as supported by the charge-sheet.

Considering the same, I am of the view that accident in question by the driver of the offending vehicle was sufficiently proved before the learned Tribunal.

In considering the income of the deceased, it appears to me that learned advocate for the Insurance Company has challenged the content of the pay slip for the month of November, December i.e. exhibit 9 and form 16. It appears that the said pay slip was issued from the HRMS portal and it is a government portal used by the government to make salary of every employee. I find no justification to contradict the content of the pay slip as well as the form 16. Form 16 is a document which is the certificate under Section 203 of the Income Tax Act of 1961 for tax deducted at source from income chargeable under the head salaries. The claimant has pleaded that the deceased was a salaried person and there is no evidence on regard regarding other source of income of the deceased. So, in my view, form 16 is the document to calculate the annul income of the salaried person.

On perusal of the impugned award, it appears to me that learned Tribunal has assessed the compensation on the basis of monthly income of the deceased as appears in the pay slip less the income tax and professional tax which appears to be Rs.29,000/-. The yearly perquisites of Rs.73,221/- was also added with the said income. The perquisites were specifically mentioned in exhibit 11 i.e. form 12BA. Perquisites contained accommodation charge, which was also included in the pay slip as housing. Considering the same, it would be proper to calculate the compensation of this case on the basis of the form 16. The form 16 is the document filed by the claimant regarding the annual income of the deceased under the head of salary. So, I think it necessary that the award passed by the learned Tribunal need be modified.

For just and proper compensation of this case, the yearly income comes to Rs.3,29,995.

Learned advocate for the Insurance Company is also argued that the mother who is the widow of the father is not at all dependant of the deceased son. The argument made by the learned advocate for the Insurance Company is not acceptable as the legal heirs i.e. legal representatives are entitled to get the compensation according to the provision of Section 166 of the M. V. Act. Thus, in this case, the dependent would be wife, two sons and the mother.

Assessment of compensation.

1. Annual income	Rs.3,29,995/-
2. Future prospect(50%)	Rs.1,64,997/-
Total	Rs.4,94,992
3. 1/4th deduction	Rs.1,23.748/-
	Rs.3,71,208/-
4. Multiplier 15 as per age of the deceased. (3,71,208X15)	Rs.55,68,120/-
5. General Damages	Rs.70,000/-
	Rs.56,28,120/-

It appears from the record that the claimants has already received a sum of Rs.35,00,000/-during the pendency of the appeal, so, after deducting already received part, the claimants are entitled to get the compensation amounting to Rs.21,38,120/-. It appears that the Insurance Company has deposited the entire awarded sum Rs.25,000/- on 19.5.2016 deposit Rs.71,70,815. The fund deposited by the Insurance Company has accrued some interest. The claimants are entitled to get the balance compensation to Rs.21,30,120/- along with 6% interest per annum from the date of filing of the claim application i.e. from December 20, 2012.

The office of the Learned General, High Court, Calcutta is directed to calculate the award amount along with interest and pay the same to the claimants with equal account payee cheques subject to the ascertainment of payment of requisite court fees. After such payment, if some amount appear to be excess in the fund that should be refunded back to the Insurance Company.

With the above observation, FMA 2293 of 2016 is disposed of.

Connected 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.)