14.07.2023
SL No.24
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 2013 of 2016

Suraj Biswas (Minor) & Ors.
Vs.
The United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellants-claimants.

Mr. Parimal Kumar Pahari
....for the respondent-Insurance Co.

The instant appeal has been preferred against the judgment and award dated 19th May, 2015 passed by learned Judge, Motor Accident Claims Tribunal, District Judge, Krishnagar, Nadia in M.A.C. Case No. 81 of 2014.

The present appellants being the claimants have preferred a claim application before the learned tribunal under Section166 of the Motor Vehicles Act, 1988 claiming compensation on the ground that their predecessor died in a road traffic accident, the facts stated in the claim application is as follows:-

On 20th February, 2014 at about 5.30 P.M., while the deceased was standing in front of Haldar Garage at that point, one lorry bearing No. WB-51/2393 dashed him behind in reckless manner accordingly, victim sustained severe injuries and died.

It is the case of the claimants that the victim was sole bread earner of their family and he used to earn Rs. 15,000/- per month from the occupation of a contractor and motorcycle repairing and reselling.

The police case was registered on the basis of self-same accident and the investigation of the police ended in charge-sheet against the driver of the offending vehicle. The owner of the offending vehicle initially contested the claim case by filing written statement thereafter he did not contest ultimately.

The insurance company i.e. the respondent No. 1 herein contested the claim case by filing written statement. During the course of trial, the oral evidences adduced including the documentary evidences by the claimants but the insurance company preferred not to adduce any evidence. After hearing the parties the learned tribunal has allowed the claim application and awarded a sum of Rs. 13,80,000/- in favour of the claimants.

The claimants aggrieved with impugned judgment on the ground that the compensation is not sufficient in attending the facts and circumstances of the case. The sole ground of challenge before this appellate court, is that the learned tribunal has computed the compensation on the basis of monthly income of the deceased amounting to Rs. 10,000/-.

Learned advocate for the appellants submitted before this court that the observation of the learned tribunal regarding monthly income of the deceased is erroneous. Learned tribunal has not considered the

Income Tax Return duly proved and exhibited by the Income Tax Officer before the learned tribunal. He further pointed out that the Income Tax Returns were filed and are marked as Exhibts-7 and 8. The learned tribunal has not considered exhibited document. He submitted before this court that it would be revealed from the exhibats-7 and 8. The Income Tax Return was filed by the deceased for the Assessment Year 2011-2012, 2012-2013 and finally 2013-2014. The original Income Tax Return for the Assessment Year 2013-2014 produced and proved by the Income Tax Officer. The income of the deceased was stated in the return to be Rs.1,99,917/-. He further argued that learned tribunal should have considered the Income Tax Return submitted by the deceased prior to his death. He again argued that from the Income Tax Return filed by the deceased it would be revealed that the income of the deceased was increasing year by year thus for assessing compensation of this case the income of the deceased should be taken according to the Income Tax Return for the Assessment Year 2013-2014.

In support of his contention he cited a decision of Hon'ble Supreme Court reported in ***2023 SAR (civ) 18 (Smt. Anjali & Ors Versus Lokendra Rathod & Ors.).*** He also cited a decision of Hon'ble co-ordinate Bench of this court passed in ***United India***

Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and Ors.

Learned advocate appearing on behalf of the insurance company submitted before this court that no document of income was produced before the learned tribunal. It has been stated in the claim application that the deceased was a contractor and he had some business of repairing and reselling of motorcycle; no such business papers or books of account were produced to substantiate the claims of the claimants. He again submitted before this court that the learned tribunal has committed no error in calculating the income of the deceased before Rs.10,000/- per month.

Heard the learned advocate perused the paper books and also perused the Income Tax Returns submitted by the deceased. It appears that for the last time the deceased submitted the return prior to his death on 3rd January, 2014. This is an Income Tax Return for the Assessment Year 2013-2014 (Exhibit-7). On perusing the ITR papers it reveals that this is the return submitted by business man or professionals, wherein it has been stated that-where there is no regular book of account of business or profession or when it was not maintained; the gross receipt and gross profit including net profit is to be calculated. However in perusing such return it appears to me that the profit of business was stated to be Rs.2,02,417/- and there was a deduction under Chapter VII-A of Rs.2,500/- thus the aggregate income was mentioned as Rs.1,99,917/-.

Hon'ble Supreme Court in ***Smt. Anjali & Ors*** has considered the Income Tax Return to be a reliable document to consider the income of the deceased. The present case is more strengthen then the case of ***Smt. Anjali & Ors.*** on the basis of factual matrix. In this case continuous last three years Income Tax Return was submitted by the deceased though this is self assessed income of the business man but I find no infirmity to disbelieve this statement.

Considering the same it appears to me that the learned tribunal has committed error for not considering the Income Tax Return submitted by the deceased prior to his death i.e. (Exhibts-7-8). I find that there are merits to entertain the instant appeal thus in my view, the compensation showed be calculated by treating the income of the deceased to be Rs.1,99,917/- per year. It further appears that the learned tribunal has not considered the judgment of Hon'ble Apex Court passed in ***Pranay Sethi*** and ***Sarla Verma,*** thus in this case considering the age of the deceased to be 32 years i.e., within the age group of 31-35. Applicable multiplier of this case would be 16. The deceased was below the age group of 40 years thus 40% of his establishment income would be added as future prospect. The present appellants are the legal heirs of the deceased including son and the wife so they are entitled to the general damages according to the observation of the Hon'ble Supreme Court in ***Pranay Sethi*** amounting to Rs.70,000/-. Thus in this case, the just and fair compensation would be:- Yearly income is Rs.1,99,917/-. The deduction would be 1/3rd towards his personal expenses i.e. Rs.66,639/- after substracting the same, the yearly income comes to Rs.1,33,278/-. The 40% of the yearly income is comes to Rs.53,311/-. Thus after adding the future prospect the yearly dependency comes to Rs. 1,86,589/-. The applicable multiplier of this case is 16. After multiplying the multiplier with the yearly dependency the award comes to Rs.29,85,424/-. The claimants are also entitled to get the general damage of Rs.70,000/- towards the general damages after adding all heads the compensation of this case be Rs.30,55,424/-.

The learned tribunal has already awarded Rs.13,80,000/- which was received by the claimants so after subtracting the award received the balance amount comes to Rs.16,75,424/-.

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 19.03.2014. The insurance company is further directed to pay the balance amount alongwith accrued interest to the claimants through the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. After receiving the amount the office of the learned Registrar General shall disburse the amount in the name of the three claimants vide three equal account payee cheques. The cheque in the name of the minor appellant No. 1 shall be received by the appellant No.2. The appellant No. 2 is directed to deposit the same in a Nationalized Bank in a fixed deposit scheme so that the amount may be utilized by the minor after attaining his majority.

The instant FMA is 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.)