26.07. 2023
item No.22
n.b.
ct. no. 551

FMA 450 of 2016

Mina Patidar @ Mina Chitrakar & Ors.
Vs.
National Insurance Compnay Ltd. & Ors.

Mr. Krishanu Banik,
Mr. Tathagata Banik,
Ms. Jaita Ghosh,
..... for the appellants.
Mr. Samim Ahammed,
Mr. Aniruddha Singh
.....for the respondents.

The instant appeal has been preferred against the judgment dated August 27, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Tamluk, Purba Medinipur in MAC case no.204 of 2010.

The appellants filed an application before the Tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor was died in a road traffic accident. The Insurance Company contested the claim case by filing written statement. Evidence was adduced both oral and documentary on behalf of both the parties. After considering the materials and evidence on record, the learned Tribunal has awarded a sum of Rs.4,41,500/- in favour of the claimants. The Insurance Company has satisfied the award and the same has been received by the claimants. Now, the claimants have preferred this appeal for enhancement of the award.

Only ground in this appeal is whether the learned Tribunal has committed error in calculating the compensation by fixing the income of the deceased to be Rs.3,000/- per month. The claimant/appellants have also in their submission for extra amount of compensation by virtue of judgment of the Hon'ble Supreme Court passed in **Pranay Shetty** on the ground of future prospects, general damages. It is further submitted on behalf of the claimants that the deduction on personal expenses was assessed by the learned Tribunal to be 1/3rd of his income but according to the judgment of the Hon'ble Supreme Court in **Pranay Sethi** as there are five claimants, so the deduction of personal expenses would be 1/4th instead of 1/3rd of his income.

Learned advocate for the appellants submitted before this Court that the learned Tribunal has committed an error in calculating the compensation of this case. He also submitted before this Court that the learned Tribunal has not considered the oral evidence of the P.W. 1, who stated before the learned Tribunal that her husband used to earn Rs.200/- per day due to business of fallen hair of human head.

He further pointed out that no documentary evidence were produced regarding the income of the deceased, but in view of the judgment of the Hon'ble Supreme Court that the statement of PW1 should be considered in assessing the compensation. He submitted that the income of the deceased should be considered Rs.6,000/- per month.

Learned advocate for the Insurance Company/respondent submitted before this Court that the learned Tribunal has considered the issue carefully and is of opinion that in absence of any documentary evidence, the income of the deceased was taken notionally to be Rs.3,000/- per month. The finding of the learned Tribunal is reasonable finding and accordingly, the impugned speaking order has been correctly passed. There is no infirmity or perversity in passing the impugned award. Thus, the ground of appeal of the present appellant cannot be considered.

In support of the contention, learned advocate for the appellant has cited some decisions where the Hon'ble Supreme Court has considered the income of a unskilled labour to be Rs.200/- per day and the same principle was also adopted in respect of home maker. He also cited a decision of the Division Bench of this Court passed in **Smt. Bilasini Mondal Vs. National Insurance Company,** wherein this Court is of the view that the evidence of the wife cannot be brushed aside in deciding the compensation in respect of her demised husband. In the case of **Smt. Bilasini Mondal,** this High Court has considered the evidence of the wife and the monthly income of the deceased was taken to be Rs.3,000/- per month. He has also cited a decision passed by the Division Bench of this Court in **National Insurance Company Ltd. Vs. Sujata Manna,** wherein the Division of this court following ratio **Bilasini Mondal** has computed the compensation in that case of deceased (Barber) to bee Rs.6,000/- per month.

Heard the learned advocates and perused the finding of the Hon'ble Supreme Court in different cases. The occupation of the deceased was stated to be business of fallen hair of human head. The monthly income of the deceased was stated in the claim application to be Rs.6,000/- per month. PW1 i.e. the wife of deceased appeared before the learned Tribunal and deposed that her husband earned Rs.6,000/- per month from the business fallen hair of human head. The business of fallen hair of human head is a business of a peculiar natural. It is not possible for a person to collect every day the fallen hair of human head and sell out the same to earn Rs.200/- per day. The situation of earnings of different persons in different perspective has to be considered in the peculiar facts and circumstances of each and every differente case. In this case, the business of fallen hair of human head is stated to be the business of the deceased. The business of fallen hair of human head (The Wig) is not appears to be very profitable business. But, the same business must have some documentary evidence. In absence of documentary evidence, I find it is not possible for this Appellate Court to assess the income of the deceased denying the finding of the learned Tribunal. Thus, I find no infirmity in the finding of the learned Tribunal in assessing the income of the deceased. Moreover, in considering the income of the deceased in Motor Vehicles claim case, the practice of this is that, in absence of any reliable documentary evidence that notional income of a deceased, who died up to year 2010 is Rs.3,000/- per month.

Thus, I am of the view, the compensation assessed by the learned Tribunal to be fixed as the monthly income of the deceased Rs.3,000/- per month is justified.

However, the appellants are entitled to have the excess amount by virtue of decision of the Hon'ble Supreme Court in **Pranay Shetty** under the head 'future prospects' and 'general damages'. In this case, the appellants/claimants are number 5 in number. They are the mother, wife and the children of the deceased. Accordingly, in this case the deduction on personal expenses should be 1/4 instead of 1/3. The deceased was admittedly died at the age of 27 years, the applicable employer according to the decision of Hon'ble Supreme Court passed in **Sarala Verma** would be 17.

In considering the entire aspect in this case, the judgment of the learned Tribunal is modified and the compensation is recasted hereunder.

1. Annual Income be assessed as Rs. 3,000 X 12	=	36,000/-
2. Future prospect be assessed 40% i.e	=	14,400/-
	Total	50,400/-
3. Deduction 1/4th on account of own personal Expenses. (Rs.50,400- Rs.12600)		37,800/-
4. Use of multiplier as per 27 age (Rs.37,800 X 17)		6,42,600/-
5. General damages as per Pranay Setti case is Rs.70,000/-		70,000/-
	Total	7,12,600/-
6. Leas Awarded amount (-)	-	4,41,500/-
7. Balance Award		2,71,100/-

The Insurance Company is directed to pay the balance amount along with 6% interest per annum from the date of filing of the claim application i.e from 1.7.2010.

The insurance Company is further directed to pay the above mentioned amount through the office of learned 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 ascertainment of payment of requisite Court fees.

Accordingly, FMA 450 of 2016 is disposed of.

All 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.)