IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

28.08.2023
SL No.28
Court No. 551
Ali

F.M.A. 735 of 2014
IA No; CAN/1/2017 (Old No.:CAN/1187/2017)

Sultana Chowdhury (Bewa) & Ors.
Vs.
Divisional Manager
The National Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
...for the appellants-claimants.

Mr. Deb Narayan Roy
....for the respondent-Insurance Co.

The instant appeal has been preferred against the judgment and award dated 21st of August, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 203 of 2007.

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 was died in a road traffic accident, due to rash and negligent driver of the offending vehicle duly insured under the policy of the insurance company.

The insurance company contested the claim case by filling written statement. The learned tribunal has heard both the parties and considered the evidences on record both oral and documentary, and passed the impugned judgment directing the insurance company to pay the compensation to the claimants amounting to Rs. 3,93,500/-. The claimants has preferred the instant appeal for enhancement.

Learned advocate for the claimants appellants submitted before this court that the appeal is preferred only on the basis of single ground. The income of the deceased was adopted by the learned tribunal to be Rs. 3,000/- per month the observation of the learned tribunal is completely erroneous. The claim application was filed stating the income of the deceased to be Rs. 10,000/- per month. It has been stated in the claim application that the deceased was a business man in the year 2008. He had a telephone and he had a big family to maintain. So at this juncture, it cannot be said that his income would be less than Rs. 10,000/-. The learned tribunal has not considered the evidences on record specifically the documents which will show that the income of the deceased and his expenditure towards maintenance of his family. So at this juncture, the learned tribunal has committed error to award the compensation on the basis of the income of the deceased to be Rs. 3,000/- per month.

Learned advocate for the insurance company submitted before this court that the claim application has stated that the occupation of the deceased to be business. No document was produced by the claimant to show the nature of business performed by the deceased. The only PW-1 i.e. the wife of the deceased, stated the deceased was Faria (middle man) of different business. The learned tribunal could not find any document or convincing evidence to satisfy himself regarding the income of the deceased. Thus, he has correctly assessed the income of the deceased Rs. 3,000/- per month. Though, in this case the alleged accident was happened in the year 2007, but the learned tribunal after considering the materials on record has correctly decided the income of the deceased to be Rs. 3,000/- per month. There is no materials to convince the learned tribunal regarding the income of the deceased. He submitted that by virtue of the decision of the Hon'ble Supreme Court passed in ***Laxmi Devi and Other Vs. Mohammad Tabbar and Another,*** the income of the deceased was calculated Rs. 3,000/- per month when there is no justifiable reason to consider the income of the deceased. On the score, learned advocate for the insurance company submitted that the tribunal has committed no error in passing the impugned award and there no merit to entertain in the instant appeal.

Heard the learned advocate perused the materials on record it appears that the income of the deceased is only under challenge before this court. The income of the deceased was stated to be Rs. 10,000/- per month through his occupation as businessman. It is true that the nature of business was not mentioned in the claim application. However, the wife of the deceased stated that her husband had a business of Faria in the local market.

Learned advocate for the appellants-claimants submitted that the claimant has submitted document i.e. the telephone bill in the name of the claimants wherefrom it would be appeared that the claimant used the telephone at the time and he spent Rs. 400/-to -Rs 500/- per month in such way. He also produced that the insurance certificate of the motor cycle used by the deceased to show that the deceased used to ply motor cycle validly with the insurance certificate. He also produced the documents of the children's of the deceased regarding their study in the local High School. On that score, learned advocate for the appellant submitted that the person who used to maintain such a huge family and such lavishly, cannot be stated to be a person general income. He further argued that the income of the deceased may be not stated in the claim application but he was engaged in different business. The deceased cannot be equated with a person who is an unskilled labour.

Heard the learned advocate perused the decision of Hon'ble Supreme Court passed in ***Laxmi Devi.*** It appears that in ***Laxmi Devi,*** the accident was happened in the year 2004; the person died in the said accident the learned tribunal has awarded the compensation. Considering the notional income of the deceased to be Rs. 15,000/- per month, on appeal High Court took the income of the deceased Rs. 3,000/- per month and took the dependency at Rs. 24,000/- after deducting the 1/3 towards the personal expenses. The view of the High Court was correctly approved by the Hon'be Apex Court and the income of the deceased was considered to be Rs. 3,000/- per month. It appears that in ***Laxmi Devi*** the deceased was stated to be a day labourer.

In this case, the deceased was pleaded to be a businessman. It is true that no document of business was filed. It is also proved that no document of income was produced. The recurring expenses of the deceased was produced before the learned tribunal which the learned tribunal did not consider. One person could not expend regularly much without any income. In this case, after observing the expenditure of the deceased and his maintenance amount towards his family, I think it necessary, the observation of the learned tribunal regarding the income of the deceased which is equated with an unskilled labour is not at all correct. In my view, the deceased must have earned something more by which he can spent the amount towards his family and his personal expenses.

In considering the entire facts and circumstances in this case, I am of the view that the observation of the Hon'ble Supreme Court in ***Laxmi Devi*** is not squarely applicable in this case. However the fact suggests that the deceased was earning more than Rs. 3,000/- per month. In this case, the income of the deceased would be not less than Rs.4,500/- per month. Considering the same the award passed by the learned tribunal need be modified.

The monthly income of the deceased Rs. 4,500/-. The yearly income comes to Rs.54,000/-. 1/4th is deducted towards his personal expenses i.e. Rs.40,500/-. The claimants are entitled to get the 40% of the establish income of the deceased towards the future prospects according to the ratio of the Hon'ble Supreme Court passed in ***Pranay Sethi.*** So after adding the 40% i.e. Rs. 16,200/-, the yearly dependency comes to Rs.56,700/-. The applicable multiplier of this case would be 15, considering the age of the deceased within the age group of 36-40 years; so after multiplying the multiplier with the yearly dependency the award comes to Rs.8,50,500/-. The claimants are also entitled to get the general damage of Rs.70,000/-. So after adding the general damages the award comes to Rs.9,20,500/-.

The learned tribunal has already awarded Rs.3,93,500/- which was received by the claimants so after subtracting the award received the balance amount comes to Rs.5,27,000/-.

The insurance company is directed to pay the balance amount of compensation to the claimants alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 21.8.2007.

The insurance company is further directed to deposit the amount within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of appellant-claimant Nos. 1-4 according to the ratio as directed by the learned tribunal according to the prevalent rules.

The instant FMA 735 of 2014 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.)