

27.09. 2023
item No.11
n.b.
ct. no. 551

FMA 130 of 2016

Usha Roy & Ors.

Vs.

New India Assurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy,
..... appellants.
Mr. Rajdeep Bhattacharya,
..... the respondent.

The instant appeal has been preferred against the judgment and award dated October 1, 2015 passed by the learned Tribunal, 2nd Court. Asansol, Paschim Bardhaman, in M.A. C. case No. 12 of 2012/ 52 of 2012.

The brief fact of the case is that the present appellants being the claimant preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles 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 under the policy of the insurance company. The Insurance Company contested the matter before the learned Tribunal.

After hearing the parties the learned Tribunal has awarded a sum of Rs.13,29,500/- in favour of the claimants and the Insurance Company is directed to pay

the compensation along with 6% interest per annum from the date of filing of the case.

Being aggrieved by and dissatisfied with the impugned award, the present application preferred by the claimants before the Appellate Court for enhancement of the compensation.

A single issue involved in this appeal is that the monthly income of the deceased was not properly calculated by the learned Tribunal.

Learned advocate for the appellants submits that the deceased was an ECL employee and the claimants has submitted pay slip to show the actual income of the deceased. The learned Tribunal erroneously not considered these documents and fixed the monthly income of the deceased to be Rs.15,000/- per month. He argued that the statutory document i.e. Income Tax Certificate was not considered by the learned Tribunal. Thus, there was an error in the said judgment. So, he prayed for just and proper compensation.

Learned advocate on behalf of the Insurance Company raised strong objection. He submitted before this Court that the learned Tribunal has considered every aspect of this case and after considering the objection raised by the Insurance Company the monthly income of the deceased was fixed to be Rs.15,000/- per month.

He again argued that the learned Tribunal has observed that after such death of the deceased, the P.W. 1

received a sum of Rs.7/8 lacks from the ECL and claimant no.3 got service on the compassionate ground. Thus, the income of the deceased is considered as Rs.15,000/- per month.

Heard the learned advocates and perused the materials on record including the LCR. It appears from the LCR that the pay slip of the deceased was filed including the Income Tax Certificate. After calculation of the pay slip less the tax component, the average monthly income appears to be Rs.26,156/- and on assessing the income tax certificate. After deducting of the tax the average monthly income of the deceased comes to Rs.25,906/-

Learned Tribunal has assessed the monthly income of the deceased on a view that the appellant no.1 has received the lump sum huge amount from ECL. The death of a person is not challenged here. The learned Tribunal has to consider the just and proper compensation. The benefit towards the family by the employer i.e. from ECL shall not be considered in this case. The compassionate appointment to one of the claimant is also not a factor to be considered in the case under Section 166 of the M.V. Act. Thus, I think that the observation of the learned Tribunal regarding the income of the deceased in lower value to that of the statutory document i.e. the income tax certificate is erroneous.

Thus, I am of considered view that the just and proper compensation of this case should be assessed as per view of the income of the deceased to be Rs.25,900/-.

From the original service Identity Card the death of birth of the deceased appears to be 5.2.1956; the deceased died on September 13, 2011. So, at the time accident, he was 55 years of age. According to the direction of the Hon'ble Supreme Court passed in **Sarala Verma** and **Pranay Sheti**, the applicable multiplier would be 11.

The deceased was in a permanent job, he was aged within 50 to 60 years. So, the claimants are entitled to get the future prospect of 15% to its actual income. The claimants are also entitled to get the general damages amounting to Rs.70,000/- in this case. The number of claimants are 4, so the deduction towards the personal expenses would be 1/4th. So, considering entire materials the just and proper compensation is calculated hereunder.

1. Monthly income	Rs.25,900/-
2. Yearly income (25,900 X 12)	Rs.3,10,800/-
3. 1/4 th deduction	<u>Rs.77,700/-</u> Rs.2,33,100/-
4. Add Future prospect 15%	<u>Rs.34,965/-</u> Rs.2,68,065/-
5. Multiplier 11 (2,68,065 X 11)	Rs.29,48,715/-
6. Add General Damage	<u>Rs. 70,000/-</u> Rs.30,18,715/-
7. Less amount received	<u>Rs.13,29,500/-</u>
Total Balance	Rs.16,29,215/-

After the calculation just and proper compensation comes to Rs.30,18,715/-. The claimants have already

received a sum of Rs.13,29,500/- along with interest from the office of the Learned Tribunal. Thus, the Insurance Company is directed to pay the balance amount of Rs.16,29,215/- along with 6% interest per annum from the date of filing of the claim application i.e. from April 10, 2012 within eight weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta

On such deposit, the claimants are at liberty to receive the same according to the prelevant rules subject to ascertainment of payment of requisite Court fees.

Accordingly, FMA 130 of 2016 is disposed of.

Connected applications, if any, are also disposed of.

LCR be sent down at once.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)