24.04.2023
Item No.586
Ct. No. 654
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1193 of 2021
With
I.A. No. CAN 1 of 2022
The Oriental Insurance Co. Ltd.
Vs.
Chhabi Dey & Ors.

Mr. Parimal Kumar Pahari,
.... For the Appellant/Insurance Company.

Mr. Jayanta Kumar Mandal,
Mr. Sayantan Rakshit,
For the respondents/claimants.

This appeal is preferred against the judgment and award dated 19th December, 2019 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track Court, Durgapur, Paschim Bardhaman in MAC Case no. 16 of 2013 granting compensation of Rs.13,55,200/- together with interest in favour of widow, minor daughters and mother of the deceased under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 22nd June, 2012 at about 9.00 p.m. while the victim was standing beside Bankura-Durgapur Road near Dejuri More under P.S. Barjora, at that time the offending Vehicle bearing Registration No. WB-02D/2722 (Maruti Van) in a rash and negligent manner dashed the victim. As a result of which the victim sustained severe bleeding injuries. Immediately the local people shifted the victim to Bankura Sanmmilani Medical College and Hospital for treatment. The attending doctor declared him brought dead. On account of sudden demise of the victim, the claimants being the widow, minor daughters and parents filed the application for compensation of Rs.9,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

In order to establish their case the claimants examined two witnesses and produced documents which were marked as **Exhibits 1** to **8** respectively.

The respondent/Insurance Company also adduced the evidence of one witness and produced the documents which were marked as **Exhibits A**, **B** and **C** respectively.

It is informed by learned advocate for respondents-claimants that during the pendency of the claim application before the learned Tribunal the father of the deceased expired. By order dated 21.12.2022, appellant-insurance company was given liberty to make necessary correction in the Memorandum of Appeal in respect of respondent no.5, father of deceased. However, such correction has not yet been made. Learned advocate for the appellant-insurance company undertakes to comply the said order.

Upon considering the materials on record and the evidence adduced by the respective parties, the learned Tribunal granted compensation as aforesaid in favour of the widow, minor daughters and mother of the deceased.

The award was passed *ex parte* against respondent no. 7-owner of the offending vehicle.

Being aggrieved and dissatisfied with the impugned judgment and award of the learned Tribunal, the Insurance Company has preferred the present appeal.

Mr. Parimal Kumar Pahari, learned advocate for the appellant-Insurance Company submits that the learned Tribunal erred in considering the income of the deceased @ Rs.6000/- per month, in view of the fact that no documentary evidence in support of such income was produced before the learned Tribunal. He further submits that in catena of decisions this Court has considered income of Rs.4000/- in the event of accident taking place in the year 2012. In the light of his aforesaid submission he prays that the impugned award of the learned Tribunal needs to be modified.

In reply to the contentions of the appellant-insurance company, Mr. Jayanta Kumar Mandal, learned advocate for the respondents-claimants submits that as per the oral evidence adduced by the widow of the deceased, her husband used to earn Rs.200/- per day which has remained unchallenged and, therefore, such oral evidence of P.W.1 should be taken into consideration so far as income of the deceased is concerned. To buttress his contention, he relies on the decision of this Court passed in ***National Insurance Company Ltd. & Ors. versus Sujata Manna & Ors.*** reported in ***MANU/WB/0540/2017***. In view of his above submissions, he prays that the award passed in favour of the claimants by the learned Tribunal should be affirmed.

Having heard the learned Counsel for the respective parties, the only question that has fallen for consideration in the present appeal is whether the learned Tribunal was justified in determining the income of the deceased @ Rs. 6,000/- per month.

With regard to the aforesaid issue it is found that the claimants in order to establish the income of the deceased have adduced the evidence of widow of the deceased as P.W.1 and one other witness and also produced the Trade

Licence of the business which is marked as **Exhibit 5**. It is found from the claim application that the claimants have stated that the deceased was the proprietor of "*Dey Misthanya Bhandar*" and the income of the deceased was Rs. 6,000/- per month. P.W.1, widow of the deceased and P.W.2, a grocery shop owner deposed that the deceased used to run the business under the name and style of "*Dey Misthanya Bhandar*". Although P.Ws. 1 and 2 have stated that the victim used to run the business under the name and style of "*Dey Misthanya Bhandar*" but upon perusal of the Trade Licence (**Exhibit 5**) it is found that father of the deceased was the proprietor of sweet shop. Thus, the claimants failed to establish that the deceased was the proprietor of the sweet shop. Be that as it may, in the cross-examination P.W.1 has clarified that her husband used to run the business which was introduced by his father. She has categorically stated in cross-examination that the regular average income from the said business was Rs. 600/- to Rs. 700/- and her husband used to get Rs. 200/- per day from her father-in-law. Thus, the monthly earnings of the victim to the tune of Rs. 6,000/- has remained unchallenged in cross-examination of P.W.1. There is no such materials forthcoming in the cross-examination of P.W.1 to disbelieve her oral evidence. I find substance in the submission of Mr. Mandal relying on the decision of this Court in the case of ***Sujata Manna (Supra)***.

In view of the above discussion, the ground taken by the insurance company in this appeal fail and thus, appeal of the insurance company is liable to be dismissed.

It is found that the Insurance Company has already deposited the entire awarded sum together with interest less statutory deposit in terms of order of this Court passed on 21st December, 2022 vide OD Challan No. 3543 dated 24th January, 2023 amounting to Rs. 21,27,880/- and has also deposited the statutory amount of Rs.25,000/- vide OD Challan No. 2827 dated 5th March, 2020.

Respondents-claimants are directed to deposit *ad valorem* Court fees on the compensation amount, if not already paid.

The learned Registrar General of this Court is directed to release both the aforesaid deposits together with accrued interest in favour of the claimants in the proportion as indicated by the learned Tribunal upon satisfaction of their identity and payment of *ad valorem* Court fees.

Respondent no.1, being the mother and natural guardian of minor respondent nos. 2, 3 and 4 shall receive the share of the said minors on their behalf and keep the share of the minors in fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minors.

Accordingly, the appeal stands dismissed. The impugned judgment and award of the learned Tribunal is affirmed.

No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)