IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

12.12.2023
SL No.17
Court No. 551
Ali

FMA 794 of 2023

Rita Bhowmik & Ors.
Vs.
SBI Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
………. for the appellants/claimants.

Mr. Rajesh Singh
…for the respondents /insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 9th October, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Howrah, in MAC Case no. 87 of 2016.

The brief facts of the case is that the present appellant being the claimants have preferred an application before the learned tribunal for getting compensation on the ground that their predecessor was 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 claimants was contested by the insurance company by filing written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 6,15,355/-.

Being aggrieved by and dissatisfied with the same award, the claimants have preferred this instant appeal for enhancement.

The only ground of appeal has argued by the learned advocate for the appellants is that the learned tribunal has not considered the income of the deceased and erroneously fixed the monthly income of the deceased notionally i.e. Rs. 3,000/- per month. He argued that the deceased was an LIC agent and he used to earn Rs. 18,000/- to Rs.20,000/- per month as an LIC agent. But, the learned tribunal has held that at the time of accident he was not an LIC agent. Learned advocate for the appellants submits that the learned tribunal has placed his reliance upon the licnece issued by the LIC in favour of the deceased wherein it was noted that the licence was valid from 21.8.2011 to 20.08.2014. He argued that the learned tribunal has failed to appreciate the other exhibited documents wherein the licence of the deceased was renewed. He places the exhibit-9 wherein it appears that the licence of the deceased was valid upto 20.08.2017.

Heard the learned advocate perused the materials on record it appears that the learned tribunal has erroneously hold that the deceased was not an LIC agent at the time of accident. But, truly the learned tribunal has misread or omitted to peruse the exhibit-9 wherein it appears that the deceased was an LIC agent.

Considering the income of the deceased it appears that one witness, namely, Prabash Biswas appeared as PW-4 before the learned tribunal who was engaged HGA to the LIC office Branch, Tamluk. He deposed that in the year 2014-2015, the deceased received as an agent of Rs. 42,285/- and he received Rs. 48,923/- in the year 2015 and 2016 as commission. The deceased met an accident on 1st of February, 2016 and succumbed to his injuries on 6th of February, 2016.

Considering the statement of PW-4, though it is not tallying the statement with exhibit-16. I think it necessary to hold that the deceased used to earn Rs. 50,000/- annually at the time of accident. The claimants are entitled to get the future prospects and general damages as per the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**. The claimants are also entitled to the medical expense as awarded by the learned tribunal.

Considering the same the award passed by the learned tribunal is hereby modified

The just and proper compensation of this case assessed as hereunder:-

<u>Calculation of compensation</u>

1. Annual Income.....................................Rs.50,000/-
2. Add: Future Prospects10% ....<u>Rs. 5,000/-</u>

Rs. 55,000/-
3. Less: deduction 1/4th.....................Rs. 13,750/-
Personal expenses Rs. 41,250/-
4. Multiplier 11 X 11
Rs. 4,53,750/-

5. Add: General Damages..... ....Rs.70,000/-
Rs.5,23,750/-
6. Add: Medical Expenses Rs.3,23,853/-
Rs. 8,47,603/-

Less: Awarded sum already
paid by Ins. Co........................Rs. 6,15,355/-
Enhance award........... Rs. 2,32,248/-

After calculation the award comes to Rs. 8,47,603/-. The learned tribunal has already awarded a sum of Rs.6,15,355/-. The balance award comes to Rs. 2,32,248/-. The insurance company is directed to pay the balance award alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 04.04.2016 within eight weeks from the date of passing of this order through the office of the learned tribunal. On such deposit the claimants are entitled to get the enhanced award in the name of the appellants by equal four account payee cheques on the prevalent Rules subject to ascertainment of payment of deficit Court Fees.

Let the LCR be sent down to the office of the learned tribunal immediately. It appears from the LCR, that the Court Fees are sufficiently paid.

The instant FMA 794 of 2023 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.)