11.07. 2023
item No.10
n.b.
ct. no. 551

FMA 720 of 2009

with

IA No. CAN 1 of 2009(Old No. CAN 4708 of 2009)

Mina Biswas & ors.
Vs.
The Oriental India Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik,
.....for the appellant.

Ms. Gopa Das Mukherjeee .... for the respondent.

This instant appeal has been preferred by the appellants being aggrieved and dissatisfied with the judgment and award dated December 15, 2008 passed by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri in MAC Case No. 15 of 2008.

Learned advocate for the appellants submitted before this Court that the impugned award passed by the learned Tribunal is erroneous. Learned Tribunal is not considered the materials and evidence on record and came to an erroneous finding. He further pointed out that the learned Tribunal has been mis-guided himself in calculating the award of this case. He submitted before this Court, learned Tribunal has directed the owner of the vehicle to pay the compensation, but it is the view of the Hon'ble High Court and the Hon'ble Supreme Court to the effect that the payment of compensation is to be made to the legal heirs of the third party, who died in a road traffic accident and thereafter recover it from owners In this case, the insurance company must be directed to pay the compensation and on the same way the insurance company must have the liberty to recover the same from the owner of the vehicle. He further pointed out that learned Tribunal has committed an error in computing the compensation on the basis of the income of the deceased to be Rs.3,000/- per month. The claimant has stated that the deceased was a Carpenter and P.W.3 has proved the fact before the learned Tribunal.

Thus the income of the deceased cannot be calculated notionally. He prayed for modification of the judgment by virtue of the judgments of Hon'ble Apex Court passed in **Sarala Verma** as well as **Pranay Setty**.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the appeal has got no merit. Learned Tribunal has specifically observed that terms of the policy was violated by the owner. Thus, the owner has the liability to pay the compensation. He further pointed out that the assessment of income of the deceased was very much correct. Learned advocate for the Insurance company is of view that no documentary evidence has been adduced before the learned Tribunal in computing the income of the deceased. Thus, the income of the deceased was correctly calculated notionally.

Heard the learned advocates and perused the materials on record. During the course of argument, learned advocate for the appellants cited a decision of the Hon'ble Supreme Court passed in passed in **National Insurance Company Vs. Swaran Singh and Ors.** wherein the Hon'ble Supreme Court in case of violation of terms and condition of the policy directed the Insurance Company to pay the compensation and in turn the Insurance Company is at liberty to recover the same from the owner. The Judgment of the Hon'ble Supreme Court passed in **Baljit Kar** also strengthen the same principle. Thus, in that point, it is the settled principle of law that when the owner run the vehicle in violation of the terms of the policy, the insurance company may have the order to pay the compensation to the third party/claimants, but at the same time Insurance Company may recover the same from the owner.

In considering the income of the deceased in this case, it appears to me that the occupations of the deceased was stated in the claim application to be a Carpenter. PW. 3 appeared before the learned Tribunal, who adduced that the deceased was the Carpenter under his furniture shop. During his cross-examination, he cannot produce any document of his furniture shop as well as any document of payment to the deceased.

Considering the above evidence, learned Tribunal is of view that in the absence of any documentary evidence, the income of the deceased was calculated to the tune of Rs.3,000/- per month, I find no infirmity in the finding of the Tribunal to that effect. Thus, in this case income of the deceased would be calculated as Rs.3,000/- per month. It further appears that the interest was awarded @ 9% per annum by the learned Tribunal. It is the usual practice of this court following the several jusgment that the insterest should be @ 6% per annum. Thus, the interest of this case should be 6% per annum.

Considering the same, the award passed by the learned Tribunal is hereby modified. The monthly income of the deceased be assessed at Rs.3000/- per month. Accordingly, the annual income came to Rs.36,000/- future prospects be assessed at 10%. Thus after adding Rs.3,600/- total in come of the decreased comes to Rs.39,600/-; deduction would be 1/4th on account of personal expense of the deceased i.e. Rs.9,900/-. So, after deducting the personal expenses, the yearly income would Rs.29,700/-. The applicable multiplier of this case is 11. After multiplying the multiplier with the yearly pendency, the compensation comes to Rs.326700/-.

In this case, according to the provision of law passed in **Pranay Setty**, the claimants are entitled to get Rs.70,000/- towards the general damages. Accordingly, the award comes to Rs.3,96,700/-. The impugned compensation shall carry 6% per annum from the date of filing of the claim application.

The insurance company is directed to pay the compensation to the claimants within eight weeks from this date thought the office of the Learned Registrar Genera, High Court, Calcutta.

The insurance company is further at liberty to recover the same from the owner of the vehicle i.e. respondent no.2 of this Case.

Accordingly, FMA 720 of 2009 is disposed of.

All connected applications, if any, are 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.)