IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

22.9.2023
SL No.25 & 26
Court No. 551
Ali

F.M.A. 3098 of 2013

IA No.:CAN/2/2018 (Old No:CAN/3579/2018)

The National Assurance Co. Ltd.
Versus
Smt. Rama Sarkar & Ors.
With

COT 14 of 2014

Rama Sarkar & Ors.
Versus
The National Assurance Co. Ltd. & Anr.

Ms. Gopa Das Mukherjee
...for the appellant in FMA 3098 of 2013 and respondent in COT 14 of 2014.

Mr. Jayanta Kumar Mandal
......for the respondents-claimants in FMA 3098 of 2013 and appellants in COT 14 of 2014.

The instant appeal has been preferred against the judgment and award dated 24th May, 2013 passed by learned Judge, Motor Accident Claims Tribunal, 13th Court, Alipore, 24-Parganas (South) in M.A.C. Case No. 18 of 2011.

The brief fact of the case is that the present respondents are the fateful parents of a young person who died in a road traffic accident. The parents have preferred a claim application under Section 166 of the MV Act before the learned tribunal for getting compensation on the ground that their unmarried young son was died in a road accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The matter was contested by the insurance company and after hearing both the parties the learned tribunal has awarded a sum of Rs. 34,64,342/-towards the compensation to the claimants.

Being aggrieved by and dissatisfied with the said judgment, the insurance company has preferred this appeal.

The only ground was raised by the insurance company before this appellate court is that there are contributory negligence on the part of the victim to cause the accident thus the insurance company may not solely liable to pay the compensation. In support to his contention, she submits that the accident was happened in Mumbai-Pune Express Highway wherein four young persons was driven a Honda City Car in high speed and in a rash and negligent manner and they dashed behind a truck. By such accident the driver i.e. the present victim alongwith another persons died on spot and the other two persons at back seat of the car sustained injuries. He argued that the evidence on record including the police paper would show that the driver of the Honda City Car i.e. the present victim was also responsible for the accident. On that score, she argued that the compensation has to be apportioned in regard to the contributory negligence on the part of the victim.

Learned advocate for the respondents/claimants filed a cross appeal, which was listed alongwith this appeal. It is the submission of the learned advocate for the claimants that the future prospects was not considered by the learned tribunal at the time of passing of the compensation as per the direction of the Hon'ble Apex Court passed in **Pranay Sethi.** As the victim was employee State Bank of India so the 50% establish income should be added towards the future prospects. He further argued that the claimants are the parents so they are entitled to get the general damages of Rs. 30,000/- alongwith with additional enhancement of 10% according to the direction of the Hon'ble Apex Court in **Pranay Sethi.** He finally argued that the police papers including the evidences of PWs and the eye witness shows that the victim was not responsible for the accident but the truck was only responsible for the accident. At this juncture, the compensation cannot be apportioned on the ground of contributory negligence.

Heard the learned advocates perused the materials on record it appears to me that the case of the claimants were stated the manner of the accident as follows:- while they were driven the

Honda City Car at that time of the offending car coming through the opposite side dashed the Honda City Car and as such they sustained the injuries and the victim died. The facts also goes to show the victim was driving the Car towards Pune.

On perusing the police papers it appears to me that after a accident the police case was registered vide Takegaon Debhade Police Case No. 36 of 2010 dated 27.02.2010. The field inquiry of the police after the said accident disclosed that both the Honda City Car and the Truck was facing towards the Pune side. The back light of the Truck was broken and filled with mud and front side of the Honda City Car was damaged. The statement of the police on detailed inquiry of the spot shows that the Honda City Car dashed the Truck from the behind. The Postmortem was conducted over the dead body of the deceased wherefrom it appears that the stomach of the victim contained undigested food alongwith smell of Alcohol. The investigation of the police ended in charge-sheet. The charge-sheet contained the statement of witnesses. The Khalasi of the said Truck has stated before the police. The statement of Khalasi, namely, Mithu Tukaram Dhigi disclosed that the Truck was going towards the Mumbai side and when he reached the PO the driver suddenly tried to cross the Express High Way by while turning for going towards the Pune side. At that time driver entered into no-entry zone, when the truck turn its head towards the Pune side suddenly the Honda City Car dashed the truck from behind. The other attending witnesses also support the version. The investigation of the police ended in charge-sheet alleging the driver of the offending truck to be responsible for the accident. So considering the entire circumstances, in calculating the negligence of parties, it appears to me that the driver of the truck suddenly without any signal entered into the no entry zone and cross the Express High Way, when he Truck its head towards Pune side at the time of the driver of the Honda City Car i.e. the victim under influence of the Alcohol failed to make the judgment about the distance between the truck and the Honda City Car and dashed the back side of the Truck. In the impact of such accident the victim died alongwith any other person.

So, in that score, it is clear that the offending vehicle i.e. the Truck was initially responsible for the accident but at the same time the driver of the Honda City Car i.e. the victim himself was also responsible as he failed to make the judgment under the influence of alcohol and could not press the break of speeding car.. Considering the same, I think it necessary that the victim i.e. the driver of the Honda City Car is 40% responsible for the accident while the offending

Truck is responsible for rest 60%. In my view, the compensation has to be apportioned to 60% : 40%.

In considering the income, the just and proper compensation in this case and it appears to me that the learned tribunal has assessed the compensation by fixing the monthly income of the deceased to be Rs. 33,871/- on perusing the exhibit 15 i.e. the Pay Slip given by the State Bank of India it appears that the Pay Slip contains the P Tax of Rs. 200/- and Income Tax of Rs. 604/- so Rs. 804/- has to be deducted towards the tax component from the gross salary of the deceased, the gross salary of the deceased Rs.33,807/-. So, in considering the compensation in this case, the Rs.800/- has to be deducted thus the income of the deceased appears be Rs.33,000/- per month.

Considering the same, it appears to me that the impugned order passed by the learned tribunal is need be modified.

The just and proper compensation is assessed hereunder.:-

<u>Calculation of compensation</u>

1. Yearly Income Rs.3,96,000/-
   Add 50% Future Prospect.............<u>Rs.1,98,000/-</u>
   Rs. 5,94,000/-
2. Less: 50% Personal Expenses Rs.2,97,000/-

3. Multiplier 17
   (Rs.2,97,000/-X 17)..................................Rs.50,49,000/

5. Add: General Damages ....<u>Rs. 33,000/-</u>

Compensation.......... Rs. 50,82,000/-

So the just and proper compensation of this case comes to Rs. 50,82,000/-

The insurance company is liable to pay the 60% of the same. So, the 50% of the same award comes to Rs. 30,49,200/-. The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of the claim application i.e. from 18th of February, 2011. It appears from the record that the insurance company has already deposited the statutory deposit of Rs. 25,000/- on 29.08.2013 and rest amount of Rs. 41,96,502/- with the office of the Registry on 12th of March, 2014 the said deposited amount must have carried some interest. At this juncture, the insurance company is liable to pay the compensation amounting to Rs. 30,41,200/-. The compensation amount appears to be less than the deposited amount, considering the same the office of the learned Registrar General, High Court, Calcutta is directed to calculate the compensation alongwith the interest as directed above from the date of filing of the claim application to its actual payment and disburse the same as early as possibly most preferable within the ensuing Puja Vacation to the claimants and after such payment if it appears that same amount is left unadjusted in the account the same may be refunded to the insurance company and after such calculation if it appears that the claimants have some due then the insurance company is to pay the rest amount within eight weeks after such calculation.

The instant FMA 3098 of 2013 alongwith COT 14 of 2014 are 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.)