IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

21.8.2023
SL No.59 & 60
Court No. 551
Ali

F.M.A. 443 of 2023

IA No.:CAN/1/2015 (Old No:CAN/3372/2015)
CAN/2/2015 (Old No:CAN/3909/2015)
CAN/3/2023.

National Insurance Co. Ltd.
Versus
Nimai Nayek & Ors.

With
COT 24 of 2023

Nimai Nayek & Ors.
Versus
National Insurance Co. Ltd.

Mr. Parimal Kumar Pahari
…for the appellant.

Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay
…for the respondents/Cross Objector.

This is an appeal preferred by the insurance company against the judgment and award dated 21st Day of August, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur in MAC Case No. 367 of 2012.

The brief fact of the case is that the present cross objector/respondents are the brothers and sisters of the deceased. They filed an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation from the insurance company on the ground that their brother 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 appellant insurance company.

The claim case was contested by the insurance company and after hearing the parties the learned tribunal has awarded a sum of Rs. 10,19,000/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award the present appeal has been preferred by the insurance company.

The learned advocate for the insurance company submitted before this court that the claim application was filed by the claimants stating the deceased to be a private tutor and the earning was stated Rs. 10,000/- per month. No document of income was produced by the learned tribunal. Instead, learned tribunal has considered the income of the deceased to be Rs. 6,000/- per month. The observation of the learned tribunal regarding the income of the deceased is completely erroneous. According to the present practice of this court when the deceased died in the year 2012 the income of the deceased, without any specific proof of documentary evidence, would be Rs. 4,000/- per month.

He also argued that the deceased was a bachelor so according to the observation of the Hon'ble Supreme Court in ***Sarla Verma*** the deduction towards the personal expenses of the deceased should be 1/2 but the learned tribunal had deducted only 1/3rd from the yearly dependency towards his personal expenses which is erroneous. He also submitted that the multiplier adopted by the learned tribunal in this case is 16 but according to the observation of Hon'ble Supreme Court in ***Sarla Verma*** the adopted multiplier should be 15.

Learned advocate for the cross objector/respondents submitted that the deceased was the person who was a master degree holder of commerce (M.Com.). The claim petition specifically stated the income of the deceased to be Rs. 10,000/- per month from the private tuition. The learned tribunal has observed that a person of such a stacher can earn by tuition at least 12 students per month @ Rs.500/-for each student by which the income of the deceased was calculated to be Rs.6,000/- per month. The assessment of the learned tribunal to that effect cannot be touched by this appellate court as there is no infirmity. The deceased may have earn more than Rs. 6,000/- per month. He further pointed out that the deceased was the earning member of the joint family of his brothers and sisters. So, the joint family has suffered immense financial loss by that demise of the deceased brother. On this score, he submitted that the observation of the Hon'ble Supreme Court in **Sarla Verma** is completely on the separate perspective of unskilled labour but the deceased of the present case is not an unskilled labour but a master degree holder of commerce; so the income of the deceased cannot be calculated or equated as per observation of **Sarla Verma.**

Learned advocate for the respondents also submitted that the total number of claimants are 7. According to the law laid down in ***Pranay Sethi*** the 1/5th of the victim's income has to be deducted towards personal expenses. In this case, the learned tribunal has only deducted 1/3rd which is not at all in proper. Though the deceased was a bachelor but he used to carry the burden of joint family by his income thus all the family members of the joint family has suffered immense. At this juncture for deduction towards the personal expenses cannot be 1/2 to the deceased's income.

He also argued that the cross appeal was preferred for getting the future prospect according to the direction of this Hon'ble Apex Court passed in ***Pranay Sethi.*** The deceased was within the age group of 36-40 at the time of accident, so the claimants are entitled to the 40% of the establish income of the deceased as a future prospect.

Heard the learned advocate perused the impugned award. In considering the income of the deceased, the learned tribunal is of view that the deceased had an educational qualification of M.Com. and he may have the capacity to teach at least 12 students per month. From which he may earn Rs. 6,000/- per month i.e. 12 students @ Rs. 500/- each.

The observation of the learned tribunal arrived at only on the basis of the educational qualification. How far he had earned from the tuition, is unknown. No person appeared except the claimants to say that he used to give tuition. Whatever, the earning of the deceased from each student earned as Rs. 500/- purely on the basis of hypothesis. There is no specific/cogent documentary evidence.

At this juncture, I think it necessary that the observation of the learned tribunal purely on the basis of assumption and presumption is not correct. The income of the deceased who died in a road traffic accident from the year 2011 to 2014 and who has no specific documentary evidences of income would be Rs. 4,000/- but it is true that the deceased in the present case is highly qualified person. So, at this juncture, his income cannot be equated with the other unemployed person. Thus, at this juncture I think it necessary to assess the compensation of this case, the monthly income of the deceased would be taken to be Rs. 5,000/-.

In considering the deduction on the personal expenses of the deceased, learned tribunal has deducted 1/3rd. It is true that the present claimants are not the 1st class heirs of the deceased. All of them are the 2nd class heirs. All of them had an independent income. It is true that the claimants have pleaded in their claim application that the deceased was a member of their joint family. The other claimants i.e. the brothers are the major and they have their separate family to maintain. So, at this juncture, it cannot be said that the income of the deceased was solely used/utilized for maintaining the family of all the claimants.

Considering the same, I think it necessary the observation of the Hon'ble Supreme Court in ***Sarla Verma*** shall be applicable here and the 50% of the deceased income should be deducted for personal expenses. Considering the same, the award passed by the learned tribunal need be modified.

For just and proper compensation of this case,

The income of the deceased is comes to Rs. 5,000/- per month. The yearly income comes to Rs. 60,000/-. The 1/2 is deducted towards the personal expenses thus yearly income comes to Rs. 30,000/-. 40% of his establish income is added towards the future prospect so Rs. 12,000/- is added as a future prospect. Thus, the yearly income comes to Rs. 42,000/-The applicable multiplier in this case would be 15 according to the observation of the Hon'ble

Supreme Court in **Sarla Verma** thus the award comes to Rs. 6,30,000/-.

The claimants are also entitled to get an amounting to Rs.30,000/- towards the general damages. After adding the general damages the award comes to Rs. 6,60,000/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application. The insurance company is directed to pay the compensation within eight weeks from the date of passing of this order. On such deposit the claimants are entitled to get the compensation equally subject to the ascertainment of payment of requisite court fees.

It appears that the insurance company has already deposited the awarded sum of Rs. 10,19,000/- with the office of the learned Registrar General, High Court, Calcutta which accrued sum interest. The office of the learned Registrar General, High Court, Calcutta is directed to calculate the award passed by this court today and pay the award to the claimants vide equal six account payee cheques, most preferably by October 10, 2023. On such payment if it appears that some amount is remaining in the stock, that should be refunded to the insurance company and if it appears that the compensation alongwith the interest is more then the deposited amount alongwith accrued interest then the rest amount has to be paid by the insurance company within four weeks.

The instant FMA 443 of 2023 alongwith the COT 24 of 2023 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.)