

12.12.2023
SL No.15
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 96 of 2023

**Jasmin Mitra @ Jasmine Mitra & Anr.
Vs.
The Oriental Insurance Co. Ltd. & Ors.**

Mr. Jayanta Banerjee,
Mr. Sandip Bandhopadhyay,
Ms. Ruxmini Basu Roy
.....for the appellants-claimants.

Mr. Argha Bhattacharya
.....for the respondent Nos. 3 & 4.

Ms. Sayanti Santra
.....for the respondent No. 1-insurance Co.

The instant appeal has been preferred against the judgment and award dated 4th April, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur, in MAC Case No. 469 of 2015.

The brief facts of the case is that the present petitioner being the claimants preferred a one application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor 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 claim case was contested by the insurance company for filing written statement.

After hearing the parties the learned tribunal

has dismissed the claim application, against such order of dismissal the present appeal has been preferred.

It appears that the learned tribunal has received the claim application; the written statement with one additional written statement was filed by the insurance company. After perusing the pleadings of the parties he has framed as well as 10 issues to determine the entire claim application. But ultimately he decided the issue No. 2 only and dismissed the claim application by observation that the issue decided against the claimants. The issue No. 2 was- "whether the suit is barred by any law".

The peculiar facts goes to show that the present appellant alongwith respondent Nos. 3 and 4 and their mother preferred an earlier claim case under Section 166 of M.V. Act which was registered as MACC 289 of 2013. The same MACC was dismissed for default on 7.5.2015. The learned tribunal after holding the fact that initially the claim case under Section 166 of the M.V. Act was dismissed for default; the present case as well as the entire claim is barred by virtue of Order IX Rule 9 CPC. The present petitioners are precluded to file a fresh application for compensation without setting aside the earlier order of dismissal.

The learned tribunal had held that the order of dismissal passed by the learned tribunal in MACC

Case No. 289 of 2013 is under Order IX Rule 9 CPC and according to the provisions; the fresh suit is a bar. The learned tribunal also observed that the Rule 343 of West Bengal Motor Vehicles Rule which mentioned the procedure to be followed by a claim tribunal in holding inquiry. In such Rule the Order IX of CPC has taken its place. The learned tribunal is of view that the Order IX Rule 9 CPC is very much applicable in the claim application. Without setting aside the earlier order of dismissal the fresh application is barred.

Let me consider whether the procedure adopted by the learned tribunal is justified in the eye of law

Learned advocate for the appellants submits that the proceeding before the learned tribunal is a quasi judicial proceeding wherein strict compliance of Civil Law as well as Criminal Law is not applicable. For the purpose of the beneficial legislation, only some Rules are applicable to proceed with this matter in summery way. He further argued that the learned tribunal has committed error for dismissing the entire claim case without observing the merit of the claim case.

Learned advocate appearing on behalf of the insurance company raised strong objection and support the observation of the learned tribunal by arguing that the learned tribunal has adopted the

proper procedure laid down the Rule itself. She further argued that the learned tribunal after perusing the entire procedure laid down in Rule 343 has adopted the correct view. Nothing prevented the present petitioner to set aside the previous order of dismissal. However, the entire claim case is barred by law. Thus, the learned tribunal has correctly dismissed the claim case.

In perusing the Rule 343 it has been mentioned that some Orders and Rules are applicable in a proceeding which should be followed by the claim tribunal. It is true that the claim tribunal has created for the purpose of providing legitimate claim to the fateful claimants who lost their beloved one in a fatal road traffic accident. However, in true sense in considering the Rule 343 it appears to me that the Order XIV Rule II and Rule V are also placed in Rule 343 of Motor Vehicles Rules 1989. Order XIV is **framing of issues**. Order XIV Rule 2 has specifically mentioned that the Court to pronounce the judgment on all issues. The Order II Rule 2 (sub Rule 2) make a provision for dismissal of a suit by framing a preliminary issue. Whether procedure as adopted by learned tribunal is actually comes under the Order II Rule 2 Sub Rule 2 of CPC, is to be looked into. For the purpose of discussion of the matter, let the Order XIV Rule 2 be set out as follows:

“Order-XIV Rule-2 [Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule(2), pronounce judgment on all issues.

(2) Where issues both a law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]”

Order XIV Rule 2 Sub rule (2) has specified that when issues both of law and fact arises in the same suit and the Court of opinion that the suit may be disposed of by deciding the issues on law only, then the Court has adopted a specific procedure laid down in the Rule itself. In that score the Court has to frame a separate preliminary issue before deciding the entire case. But in this case it appears that the learned tribunal has not adopted such procedure for framing up a preliminary issue. He framed all 10 issues both of law and fact. In this case, at the time of deciding all the issues the

learned tribunal has only picked one issue i.e. issue No. 2 to decide the matter. So, the procedure adopted by the learned tribunal is not correct. However, let me consider the applicability of Order IX Rule 8 and Order IX Rule 9 of CPC in a claim case. The Order IX Rule 9 has started with a specific heading that “decree against plaintiff by default bar fresh suits”. This application under Section 166 of M.V. Act is not a suit in a strict sense.

In considering the approach of the Hon’ble Supreme Court and different High Courts in dealing claim appeal under M.V. Act, it is presumed that the Rules of CPC which are mentioned in Rule 343 of the West Bengal Motor Vehicles Rules are applies *mutatis mutandis* so far as for the purpose of providing sufficient compensation/reliefs to the claimants. The legislation enacted the procedures to be adopted by the claim tribunal following the Rules of CPC and CrPC so that, the claimants may not be deprived from their legitimate claim due to procedural stringency. Some procedural lapse on behalf of the claims shall not preclude him for getting just compensation. If a claimant is deprived from his lawful claim only for not following the strict Rule of procedure, the sole purpose of the legislatures would be frustrated.

So, in my view the strict approach taken by the learned tribunal in dismissing the entire claim

case is not correct. Thus, the issue No. 2 decided by the learned tribunal is appears to be not justified. The learned tribunal should have discussed all the issues both framed in law and in fact before disposing of the matter. Accordingly, I think it necessary that the observation of the learned tribunal is perverse to the facts and circumstances of this case. Accordingly, the same observation is set aside.

In deciding the merit of this instant claim case it appears to me that the claimants have pleaded that the deceased was a contractor who used to earn Rs.12,000/- per month. The Income Tax Return has been submitted before the learned tribunal for the year 2007-2008 and 2008-2009 the same has been specifically proved that they are filed to the Income Tax Department concerned.

Learned advocate for the appellant submit that the income of the deceased may be calculated by virtue of the Income Tax document. He further cited a decision of Hon'ble Supreme court passed in **Smt. Anjali and Others Versus Lokendra Rathod and Others** reported in **2023 (1) T.A.C. 92 (S,C)** wherein the Supreme Court has been observed that the income Tax Return is a statutory document and the tribunal has to assess the income of the deceased on the basis of such document. On the other hand, learned advocate appearing on behalf of

the insurance company raised strong objection and submits that only the 2 years statement has been filed. No Income Tax Return has been filed for the Assessment Year 2010-2011.

It appears that the deceased died on 14th of January, 2011; the last month of filing of Income Tax Return is March 2011, so in that score the deceased could not get the opportunity to file the return for that period. However in considering the statement filed by the claimant before the learned tribunal it appears to me that the yearly income of the deceased stated in the assessment year 2007-2008 was Rs. 1,09,970/- less Tax component of Rs.1,017/- and the income for the assessment year 2008-2009 was 1,22,394/- less the Tax component of Rs.1,276/-; consequently the income of the deceased for the assessment year 2007-2008 was Rs. 9,000/- (Approx.) and his income in the year 2008-2009 Rs. 10,000/- (approx.).

Considering the same the average income of the deceased may be calculated Rs. 9,500/- per month. The deceased was aged about 54 years. According to the observation of Hon'ble Supreme Court passed in **Sarala Verma**, the applicable multiplier would be 11. The deceased was not in a fixed salary, and the age of the deceased between 50-60 years. The claimants are entitled to get 10% to the establish income of the deceased towards the

future prospects. The number of claimants is four so the deduction towards the personal expenses would be 1/4th. The claimants are also entitled to get Rs. 30,000/- towards the general damages.

On merit learned advocate for the insurance company submits that the policy No. is not matching as mentioned in the claim application. Heard the learned advocate for the insurance company it appears that the insurance policy has been produced before the learned tribunal and was marked with exhibited with objection the policy paper reveals the number of the vehicles including the owner’s name of the vehicle with whom the insurance company has the contact to indemnify.

Considering the same, I think it hold that the submission of the learned advocate for the insurance company cannot be entertained.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

<u>Calculation of compensation</u>	
1. Monthly income	Rs.9,500/-
2. Annual Income (Rs.9,500 X 12).....	Rs.1,14,000/-
3. Add: Future Prospects @ 10%.....	Rs.11,400/-
	Rs. 1,25,400/-
4. Less: deduction 1/4 th	Rs. 31,350/-
	Rs. 94,050/-
5. Multiplier 11	<u>X 11</u>
	Rs. 10,34,550/-
6. Add: General Damages.....	Rs.33,000/-
Compensation	Rs.10,67,550/-

After calculation the award comes to Rs. 10,67,550/-. The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the appellants and respondents No. 4 and 5 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.

The instant **FMA 96 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.)