IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

06.09.2023
SL No.36
Court No. 551
Ali

F.M.A. 2792 of 2015

Smt. Kajal Bera @ Kajal Rani Bera & Ors.
Vs.
Nishikanta Acharyya & Anr.

Mr. Laltu Mohan Ghosh
…for the appellants-claimants.

Mr. Parimal Kumar Pahari
……….for the respondent No.2 insurance Co.

The instant appeal is preferred against the judgment and Order dated 12th December, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, Tamluk, Purba Medinipur in MAC Case No. 162 of 2013.

The brief fact of the case is that the present appellant being the claimants have preferred an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation from the insurance company on the ground that the their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured by the policy of the insurance company.

The claim case was contested by the insurance company by filing written statement.

The learned tribunal after hearing both the parties and after taking the evidences awarded a compensation in favour of the claimants to the tune of Rs.2,25,500/- alongwith interest @ 6% per annum from the date of filing of the application.

Being aggrieved by and dissatisfied with the impugned award of compensation, the present appeal was preferred.

Learned advocate for the appellants submits that the instant appeal is preferred only for enhancement. The learned tribunal has awarded the compensation by fixing the monthly income of the deceased to be Rs. 3,000/- per month. The learned tribunal was erroneous of such finding. The deceased was the proprietor of “Shyamasri Bhandar” wherefrom he used to earn Rs. 16,000/- per month. Several documents of income were produced before the learned tribunal including the IT return. The PW-3 appeared before the learned tribunal to prove the IT return showing the income of the deceased to be Rs. 1,72,000/- per year. The learned tribunal has not considered the documentary evidences and passed the award erroneously so he prayed for necessary order for just and proper compensation.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the insurance company submits that the impugned award passed by the learned tribunal is not suffered any illegality. The observation of the learned tribunal regarding dis-believability of the documents of income was already there in the impugned judgment itself. Learned tribunal has passed the speaking order to that effect. He further argued that the documents filed by the claimants to prove the income of the deceased cannot be believed as they are all prepared after the demise of the deceased. So, the observation of the learned tribunal was correct regarding the notional income of the deceased.

Heard the learned advocate perused the materials on record. It appears to me that the IT return for two Assessment Years was filed before the learned tribunal for showing the gross income of the deceased. One is for the Assessment Year 2011-2012 another is for the Assessment Year 2012-2013. The PW-3 appeared before the learned tribunal to prove those documents. It was the evidence of PW-3 that these documents were filed with the Income Tax Department. The balance sheet of “Shyamasri Bhandar” was also produced regarding the Assessment Years 2008-2009, 2010-2011, 2011-2012 and 2012-2013. On perusing the said balance sheet including the IT return, it appears that both the Income Tax Returns were filed in the year 2014 i.e. after the demise of the deceased. All the balance sheet was also prepared in the year 2014.

On that score, the observation of the learned tribunal is justified to the fact that the documents were prepared for the purpose of the instant claim application. I find no infirmity in such finding, so I am of the view that the income of the deceased correctly calculated notionally. It is the fact that the deceased was died in the year 2012.

In considering the notional income of the deceased this court adopted a view in several times that when the deceased died in a road traffic accident from the year 2011-2014 without any valid prove of income, the notional income of the deceased should be calculated to be Rs. 4,000/- per month. The same view is adopted here and the income of the deceased is to be calculated in this case fixing Rs. 4,000/- per month.

The claimants are entitled to get the future prospects and the general damages according to the observation of the Hon'ble Supreme Court in **Pranay Sethi.** As the number of claimants more than three so the personal deduction would be 1/4th.

For the purpose of just and proper compensation the impugned award passed by the learned tribunal is hereby modified and recasted as follows:

Monthly income Rs. 4,000/-, yearly income Rs. 48,000/-. The future prospects 10% i.e. Rs. 4,800/- is added thus the yearly income comes to Rs. 52,800/-. 1/4th is deducted so after deduction the yearly dependency comes to Rs. 39,600/-. The applicable multiplier is 9 so after adopting the multiplier the award comes to Rs. 3,56,400/-. The claimants are also entitled to get the future prospects to the tune of Rs. 70,000/- after adding the future prospects the award comes to Rs. 4,26,400/-. The claimants have already received the amount of compensation of Rs. 2,25,500/- so subtracting the same amount the balance award comes to Rs. 2,00,900/-.

The insurance company is directed to pay the balance amount of Rs. 2,00,900/- alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 02.07.2013 within eight weeks from the date of passing of this order with the office of learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the same according to the prevalent Rules subject to the ascertainment of payment of requisite Court Fees.

The instant FMA 2792 of 2015 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.)