17.08. 2023
item No.5
n.b.
ct. no. 551

FMAT(MV) 225 of 2022

Chinmoyee Mondal & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Pingal Bhattacharya,
Ms. Poonam Keswani,
Mr. Rajdeep Sinha,
.....for the appellants.
Mrs. Sucharita Paul,
.... For the respondent.

Deficit Court Fee has been paid by the appellants.

The instant appeal has been preferred against the judgment and award dated February 26, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Tribunal, Tamluk, Purba Medinipur, in M.A.C. Case No. 61 of 2014 and MA.C. Case No. 296 of 2014 under Section 166 of the M. V. Act.

The brief fact of the case is that the appellants being the claimant filed an application before the learned Tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor has died in a road traffic accident for rash and negligent driving of the offending vehicle duly insured under the policy of the present respondent/Insurance Company. The owner of the offending vehicle did not contest the matter before the learned Tribunal. However, the Insurance Company has contested the case by filing written statement. The claimants have adduced oral and documentary evidence before the learned Tribunal and after hearing the parties, learned Tribunal has awarded Rs.5,46,526/- along with 6% interest per annum from the date of filing of the case in favour of the claimants.

Being aggrieved by and dissatisfied with the said judgment, the present appellants preferred the instant appeal for enhancement of the award.

The sole ground of the instant appeal is that the learned Tribunal has awarded the compensation on the basis of the monthly income of the deceased notionally to be Rs.4,000/- per month. Thus, the submission of the learned advocate for the appellants that the deceased was a Manager of a business and used to earn Rs.9,000/-. The employer deposed before the learned Tribunal as P.W. 2 and one salary certificate was also exhibited in relation to which the learned Tribunal has not believed the fact of employment of the deceased and erroneously considered the income of the deceased Rs.4,000/-

Learned advocate for the appellants further submits that the income of the deceased should be considered Rs.9,000/- per month. The observation of the learned Tribunal to that effect is erroneous.

Learned advocate for the Insurance Company raised strong objection and submitted before this Court that a sole document was marked before the learned Tribunal which nothing but a letterhead which can be easily procured.. He also pointed out that the business of the p.w. 2 is not at all reliable.It is the observation of the learned Tribunal that the alleged salary certificate contained no registration number or licence number. Thus, it cannot be believed. He argued that the observation of the learned Tribunal is justified that the income of the deceased was taken notionally Rs. 4,000/- per month as he died in the year 2014. He again pointed out that there is no chance to interfere with the instant appeal.

Heard the learned advocates and perused the materials on record, the sole ground of the appellant is the income of the deceased. The claimant stated the income of the deceased as Rs.9,000/- per month. P.W. 2 appeared before the learned Tribunal to be the employer of the deceased filed one handwritten certificate contained that she used to give remuneration to the victim of Rs.9,000/- per month.

It is true that the sole document of income, which was exhibited before the learned Tribunal does not ipso facto proved the business of the P.W. 2. The business has to be proved by convincing documents i.e. I.T return/ licence/ registration number, Trade licence etc. However, learned Tribunal observed that the income from the said establishment is not believable. I find no discrepancy in the finding of the learned Tribunal regarding non-proofing of the business of the P.W.2.

However, the notional income was adopted in this case to Rs.4,000/- per month but considering the number of the claimants and considering the year of the accident, the notional income of the deceased of this case should be at least Rs.4,500/- per month. Considering the same, the impugned award passed by the learned Tribunal is hereby modified.

Monthly income comes to Rs.4,500/-. Yearly income comes to Rs.54,000/-. Considering the number of claimants 1/4th is deducted towards the personal expenses of the deceased. So after deduction the early dependency comes to Rs.4,500/-. The claimants are entitled to get 10% of future prospects to the established income of the deceased according to the direction of the Hon'ble Supreme Court in **Pranay Shetty.**

The award is recusted as follows:

1. Income	Rs.4,500/-
2. Annual income (4,500X12)	Rs.54,500/-
3. Add 10% future prospect	Rs.5.400/-
	Rs.59,400/-
4. Less ¼ in 'personal expenses'	Rs.14,850/-
	Rs.44,550/-
5. Multiplier 11 (44,550X11)	Rs.4,90,050/-
6. Add General Damages	Rs.70,000/-
	Rs.5,60,050/-
7. Less award already received	Rs.5,46,526/-
Total balance	**Rs.13,524/-**

The insurance Company is directed to deposit the balance awarded amount along with 6% interest from the date of filing of the claim petition with the office of the learned Tribunal within eight weeks from the date of passing of this order in the name of the appellant/claimants vide four equal account payee cheques subject to the ascertainment of payment of requisite Court fees. On such deposit, the claimants are at liberty to withdraw the same according to the prevalent rules.

Accordingly, FMAT(MV) 225 of 2022 is disposed of.

All connected applications, if any, are also 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.)