18.07. 2023
item No.10
n.b.
ct. no. 551

FMA 1625 of 2011

Hasina Begam & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik
.....for the appellants.
Mr. Rajesh Singh
.... For the respondents.

The instant appeal has been preferred by the claimant against the Judgment dated April 8, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Hooghly in M.A.C. case no.425 of 2004.

The brief fact of the case is that on 27.6.2004 an Auto Rickshaw suffered an accident and it was capsized. The victim who was travailing in the said Auto Rickshaw suffered severe injury on his head and untimely he is succumbed of his injuries. The claim case was preferred by the legal heirs of the deceased. Learned Tribunal has heard the matter and also perused the evidence on record and award the compensation amounting to Rs.2,75,900/- in favour of the claimants and directed the owner of the offending vehicle to pay the compensation in stead of Insurance Company; on the ground that at the time of accident the diver of the Auto Rickshaw had only "learners licence."

Now the claimants are before this Appellate Court on the single ground that the learned Tribunal has committed an error by directing the owner of the offending vehicle to pay the compensation. Learned Tribunal should have directed the Insurance Company to pay the compensation as the vehicle was covered under the Insurance Policy at the time of accident. He further pointed out by the decision of Hon'ble Supreme Court passed in **Baljit Kaur, Swaran Singh** as well as **Challa Bharathama,** in case of any breach of the policy of the Insurance Company, the third party should not have been denied compensation. In those cases, Hon'ble Supreme Court has directed the Insurance Company to pay the compensation and they are at liberty to recover the same from the owner. He further pointed out that the direction of the learned Tribunal or judgment passed by the learned Tribunal is erroneous to that effect.

Learned advocate appears on behalf of the appellants also submitted that the learned Tribunal has committed an error in assessing the monthly income of the deceased to be Rs.2,600/-; it should be at least Rs.3,000/- per month.

He again argued that the future prospects and general damages according to the direction of the Hon'ble Supreme Court passed in **Pranay Shetty** has to be awarded along with compensation.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the driver of the Auto Rickshaw appeared before the learned Tribunal as D.W.1. He himself stated that at the time of accident he possessed the "learners licence". Admittedly, there are no valid licence holder or driver to guide the learner. At this juncture, learned tribunal has correctly considered the fact and directed the owner of the vehicle to pay the compensation. He further pointed out that the judgment passed by the learned Tribunal suffers no illegality and there is not perversity.

Learned advocate for the Insurance Company further point out that by virtue of direction of the Hon'ble Supreme Court passed in **Challa Bharathamma** the procedure for recovery from the owner was specifically mentioned. He also pointed out before this Court that the recovery procedure adopted by the Insurance Company is a futile exercise; so the order passed by the learned Tribunal need be maintained.

Heard the learned advocate perused the materials on record and also perused the judgment passed by the Hon'ble Supreme Court in **Saran Singh**, **Baljit Kaur and Challa Bharathamma.** It appears to me that in all the cases, in case of breach of any insurance policy, the Hon'ble Supreme Court has specifically ordered that the third party, who suffered an accident should not be harassed much. Thus, the insurance company who don't have actual liability in law to pay the compensation to the claimants but they are directed to pay and they are at liberty to recover the same. Thus, in following the decision of the Hon'ble Supreme Court, it appears to me that the judgment passed by the learned Tribunal is required to be modified. The Insurance Company is liable to pay compensation of this case and they shall recover the same from the owner according to procedure laid down in **Swaran Singh** and **Challa Bharathamma.**

In considering the income of the deceased it appears that the claim application stated the income of the deceased to be Rs.5,000/- to Rs.6,000/- per month. The occupation of the deceased stated in the claim application to be business. No document regarding the business or any professional activity of the deceased was produced before the learned Tribunal. Considering the notional income of a person i.e. Rs.100/- per day, learned Tribunal considered that one person might be employed mostly 26 days in month. Thus, monthly income of the deceased was assessed Rs.2600/- per month.

However, considering the facts the circumstances of the case and considering the national income adopted by this Court on regular basis, I think it is necessary to assess the compensation according to the monthly income of the deceased to be Rs.3000/- per month. The deceased also entitled to have the future prospects upon his income @ 25% ; as admittedly the deceased is within the age group of 40-50 years. The claimant i.e. the appellant no.1 is wife of the deceased. So, she is entitled to get Rs.70,000/- as general damages by virtue of the law laid down in "**Pranay Sethi"**. The appellant no.1 namely, Hasina Begam has already received Rs.50,000/- as initial award according to the provisions of Section 140 of the M.V. Act that award should be deducted from the total compensation.

Accordingly, the award of Tribunal is hereby modified are recasted hereunder:-

1. Annual Income		Rs. 36,000/-
2. Add : Future Prospect(25%)		Rs. 9,000/-
		Rs. 45,000/-
3. 1/3 Deduction (Rs.45,000/-- 15,000/-)		Rs. 30,000/-
4. Multiplier as per age of 13 (Rs.30,000/- X 15)		Rs.4,50,000/-
6. General Damages		Rs. 70,000/-
		Rs.5,20,000/-
7. Less Awarded amount (Rs.50000/-)	(-)	50,000/-
Balance		**Rs. 4,70,800/-**

The insurance company is directed to pay the compensation along with interest 6% per annum from the date of filing of the claim application within eight weeks from the date of passing of this order through of the Office of the learned Registrar General, High Court, Calcutta.

The office of the learned Registrar General on such deposit shall disburse the amount in the name of the claimants/appellant no.1 by a single account pay cheque as early as possible.

The FMA 1625 of 2011 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.)