IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

23.08.2023
SL No.39
Court No. 551
Ali

FMA 1236 of 2022
IA No: CAN/1/2013 (Old No:CAN/6484/2013)

Smt. Sumitra Biswas & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
……for the appellants-claimants.

Mr. Afroze Alam
………..for the respondent insurance Co.

The instant appeal is preferred by the claimants against the judgment dated 18th January, 12th day of December, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Nadia in MAC Case No. 375 of 2011 under Section 166 of the M.V. Act.

The brief facts of the case is that the present appellant being the claimants preferred one claim 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 predecessor 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 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. After hearing the parties and after receiving the evidences from the claimants, the learned tribunal has awarded a sum of Rs.3,69,500/- in favour of the claimants.

Being aggrieved by and dissatisfied with the said award the present appeal has been preferred by the claimants for enhancement of the compensation.

Learned advocate for the appellants submitted before this court that the impugned award passed by the learned tribunal is erroneous. It was pleaded before the learned tribunal that the deceased was a mason and he used to earn Rs. 180/- per day. The oral evidences were properly adduced to that effect. But the learned tribunal has considered the income of the deceased notionally to be Rs.100/- per day. There is no justification for such finding of the learned tribunal so the assessment of compensation by the learned tribunal on the basis of the income of the deceased i.e. Rs. 3,000/- per month is erroneous. He also argued that by virtue of decision of the Hon'ble Apex Court passed in ***Pranay Sethi***. The claimants are entitled to get the future prospects as well as the general damages, in this case which was not awarded by the learned tribunal.

The learned advocate for the insurance company submitted before this court that the impugned award passed by the learned tribunal is not perverse there is no chance to interfere with the impugned award. No document of income was produced or proved before the learned tribunal. The learned tribunal has no materials to consider the income of the deceased to Rs. 180/- per day. Only the pleading is not sufficient to assess the compensation in a Motor Vehicles Act.

In this case, the learned tribunal has not committed any error. He also conceded that the Constitution Bench of Hon'ble Supreme Court has guided to provide the future prospects and general damages so they may be allowed.

Heard the learned advocate perused the materials on record and also perused the impugned judgment passed by the learned tribunal. The learned tribunal has awarded the compensation on the basis of the income of the deceased to be Rs. 3,000/- per month. The income of the deceased was considered by the learned tribunal to be Rs. 100/- per day. It is true that for a mason is not possible to show any document of income. Moreover, if it considered the income of the deceased Rs. 180/- per day then also in every day of a month, it is not possible for a mason to be engaged himself for employment.

However, this court on such obligation has generally formulated a practice that when a deceased died in a road traffic accident in the year 2011 to 2014 without any reliable documentary evidences of income, the notional income of the deceased to be considered Rs.4,000/- per month, the same view may be applied in this case. Thus, in this case the compensation should be calculated on the basis of the income of the deceased to be Rs. 4,000/- per month. It further appears that the multiplier adopted by the learned tribunal is 15 but considering the postmortem report in page 15 of the paper book the age of the deceased appears to be 45 years. Thus, the multiplier of this case would be 14 according to the judgment of Hon'ble Supreme Court passed in ***Sarla Verma***. The claimants are also entitled to get the future prospect which would be added with his establish income; it would be 25%. The claimants are also entitled to get the general damages of Rs. 70,000/-.

On considering the entire aspects, it appears to me that the impugned award passed by the leaned tribunal need be modified.

For just and proper compensation of this case, the income of the deceased is calculated Rs. 4,000/- per month. The yearly income comes to Rs. 48,000/-. 25% future prospect i.e. Rs. 12,000/-to be added so after adding the future prospect the annual income comes to Rs. 60,000/- 1/3rd is deducted towards his personal expenses of the deceased. Thus, the yearly dependency comes to Rs.40,000/-, the applicable multiplier in this case is

14 so after multiplying the multiplier the loss of dependency comes to Rs.5,60,000/-. The claimants are also entitled to get the general damages of Rs. 70,000/-thus the award comes to Rs.6,30,000/-.

The claimant has already received the award amounting to Rs.3,46,500/- so after subtracting, the balance award comes to Rs.2,83,500/-.

The insurance company is directed to pay the balance compensation to the claimants alongwith interest @ 6% per annum from the date of filing of this claim application within eight weeks from the date of passing of this order with the office of the learned tribunal vide three equal account payee cheques in the name of appellant Nos. 1, 2 & 3 i.e. Smt. Sumitra Biswas, Palash Biswas and Baishakhi Biswas (Das).

On such deposit the claimants are at liberty to receive the same cheques subject to ascertainment of payment of requisite court fees.

The instant FMA 1236 of 2022 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.)