

08.12. 2023
item No. 16 & 17
n.b.
ct. no. 551

FMA 557 of 2023

National Insurance Co. Ltd.

Vs.

Salma Khatun & Ors.

With

COT 65 of 2023

Salma Khatun & Ors.

Vs.

National Insurance Co. Ltd.

Mr. Deb Narayan Ray,
.....for the appellant.
Mr. Amit Ranjan Roy
.... For the respondent.

This appeal is preferred against the judgment and award dated March 15, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Kawta, in MAC case No.98 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that the present respondent/claimant preferred an application before the learned Tribunal under Section 166 of M.V. Act for getting compensation on the ground that the predecessor of the claimants was died in a road traffic accident due to rash and negligent driving of the offending vehicle duly insured by the Insurance Company. The claimant's case was contested by the Insurance Company. The learned Tribunal after hearing the parties and after receiving the witnesses has passed an award in favour of the claimants

amounting to Rs.10,37,000/- along with 6% interest per annum from the date of filing of the case.

Being aggrieved by and dissatisfied with the said order, the Insurance Company has preferred the instant appeal. The claimant/respondent also preferred a cross appeal against the instant appeal.

Both the appeal and the cross appeal being COT 65 of 2023 are taken up for hearing.

Learned advocate for the Insurance Company submits that the income of the deceased was taken to be Rs.6,000/- per months by the learned Tribunal. No evidence was placed before the learned Tribunal for adopting such high income. It would be revealed from the cross-examination of P.W. 1 that the father of the deceased had a separate business of Baloon selling and the claimant no.1 used to get Rs.1,000/- towards her widow compensation from the Government. He further argued that the occupation of the deceased was stated to be a mansion but no such document of his job under a contract or any employment was proved. Thus, income of the deceased was erroneously taken Rs.6,000/- in this case. The notional income of the deceased Rs.3,000/- per month would be sufficient.

Learned advocate for the respondent/claimant submits that the claim application was filed stating the occupation of the deceased to be mansion and monthly income was stated Rs.6,000/- per month. He hand over

government order under the West Bengal Minimum Wages Act dated January 1, 2018. The minimum wages under the State of West Bengal, Andhra Pradesh, Telangana & Tripura was stated for un-skilled labour as Rs.6920/-. He further argued that the learned Tribunal has received the evidence of PW 1 and after considering the entire circumstances, he passed the award considering the income of the deceased Rs.6,000/- per month. He argued that there are no illegality for accepting such income.

Heard the learned advocates, perused the materials on record and perused evidence of the wife of the deceased i.e. PW.1, who stated on dock that her husband used to earn Rs.250 per day and average monthly income was Rs.6,000/-. The deceased suffered an accident on 27.5.2018 and succumbed to his injuries on 29.5.2018. The deceased was to maintain his family of five members including himself. Considering the rising value of essential commodities, and also considering the minimum wages of skilled labour of State of West Bengal, I think it fit to observe that the learned Tribunal has corrected adopted monthly income of the deceased of Rs.6,000/-. It further appears that the learned Tribunal has adopted the multiplier of this case to be 18. The deceased was 26 years old at the time of accident (PM). So, in this case applicable multiplier would be 17. The learned Tribunal has considered the consortium spouse and other funeral expenses but the observation of the Hon'ble Supreme

Court in **Pranay Shetty** is very much clear that the general damages would be Rs.70,000/-. The award was passed in the year 2023, so, additional 10% of the general damages has be added. The claimants are also to get further prospect according to the observation of the Hon'ble Supreme Court in **Pranay Shetty** that would be 40% to the establishment income of the deceased.

Considering the entire aspect, it appears to me that award passed by the learned Tribunal need be modified. Just and proper of the award hereby assessed as follows:

1. Monthly income	: Rs.6,000/-
2. Yearly income (6000X12)	: Rs.72,000/-
3. 1/4 th Deduction personal Exp.	: <u>Rs.18,000/-</u> Rs.54,000/-
4. 40% future prospect	: <u>Rs.21,600</u> Rs.75,600/-
5. Multiplier "17" (75,600X17):	Rs.12,85,200/-
6. General Damages	: <u>Rs.77,000/-</u> : Rs.13,62,200/-
7. Less award paid	: <u>Rs.10,37,000/-</u> : Rs.3,25,200/-

After calculation the award comes to Rs.13,62,200/-
The Insurance Company has deposited the entire award sum with the office of the learned Registrar General, High Court, Calcutta. The Tribunal has already awarded Rs.10,37,000/-, the balance award comes to Rs.3,25,200/-

The Insurance Company is directed to pay the balance awarded sum along with 6% per annum from the date of filing of the claim application within six weeks from

the date through the office of the learned Registrar General, High Court, Calcutta. On such deposit, the registrar General, High Court, Calcutta shall disburse the same according to the prelevant rules subject to payment of deficit court fees if any. It appears that the Insurance Company has already deposited the awarded sum Rs.10,37,000/- along with interest. The deposited amount must have carried some interest. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the same amount in the name of the claimants according to the prelevant rules.

The office of the learned Registrar General, High Court, Calcutta is to disburse the amount in the name of the claimants according to the direction passed by the learned Tribunal.

Accordingly, both the appeals being FMA 557 of 2023 and COT 65 of 2023 are disposed of.

Pending application, 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.)