

22.08.2023
SL No.25
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A.T. 708 of 2014

**Minara Bibi @ Bewa & Ors.
Vs.
The Divisional Manager
Oriental Insurance Co. Ltd. & Anr.**

Mr. Saidur Rahaman
.....for the appellants-claimants.

Mr. Parimal Kumar Pahari
.....for the respondent insurance Co.

The instant appeal is preferred by the claimants being aggrieved by and dissatisfied with the award dated 18th January, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Balurghat, Utter Dinajpur in MAC Case No. 39 of 2011 under Section 163-A of the M.V. Act.

The brief facts of the case is that the present appellant being claimants preferred an application under Section 163-A of the M.V. Act before the learned tribunal 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. The owner of the offending vehicle did not contest the matter, however, the insurance company has contested the case by filing written statement. After hearing the parties and after

perusing the materials on record the learned tribunal has awarded the compensation of Rs.2,59,100/- in favour of the claimants.

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

Learned advocate for the appellants submitted before this court that the impugned award passed by the learned tribunal is erroneous. The learned tribunal has considered the income of the deceased to be Rs.2,400/- though the income of the deceased was stated in the claim application to be Rs.3,200/-. He again argued that the deceased was a business man and self-employment. The evidence has been adduced to that effect so the income of the deceased cannot be less than Rs.3,200/- per month.

Learned advocate for the insurance company raised an objection and submitted before this court that the learned tribunal has correctly assessed the compensation. Nothing is there before the learned tribunal to assess the income of the deceased. No documentary evidences were produced.

Learned tribunal on considering the materials on record is of view that the income of the deceased may be Rs.100/- per day. The person can be involved in the business for 24 days in a month. Thus, the income of the deceased was calculated to

Rs.2,400/- per month. There is no error in such finding of the learned tribunal so he prayed for dismissal of the instant appeal.

Heard the learned advocate perused the paper book also perused the impugned award passed by the learned tribunal. It appears to me that the application filed before the learned tribunal under Section 163-A of M.V. Act. The involvement of the offending vehicle was very well proved.

In computing the compensation the learned tribunal has assessed the income of the deceased to be Rs.100/- per day. In fixing the notional income of a deceased the Hon'ble Supreme Court in several decisions including the decision of **Sarla Verma** has held that in case of unskilled labour the income of the deceased is very well assessed to the Rs.3,000/- per month. Considering the same the ratio adopted by the Hon'ble Supreme Court in **Sarla Verma** may be applied in this case.

The compensation should be calculated considering the income of the deceased to be Rs.3,000/- per month. It further appears to me that the deceased was 38 years of age at the time of death; so the applicable multiplier of this case would be 15.

On the above observation, the impugned award passed by the learned tribunal need be modified.

For just and proper compensation of this case; the income of the deceased is calculated Rs. 3,000/- per month. The yearly income comes to Rs. 36,000/-. 1/3rd is deducted to his personal expenses. After deduction the annual income comes to Rs.24,000/-, the applicable multiplier in this case is 15. After multiplying the multiplier the award comes to Rs.3,60,000/-. The claimants are also entitled to get the general damages of Rs. 9,500/- after adding the general damages the award comes to Rs.3,69,500/-.

The claimant has already received the award amounting to Rs.2,59,100/- so the balance amount comes to Rs.1,10,400/-.

The insurance company is directed to pay the balance compensation alongwith interest @ 6% per annum from the date of filing of the claim application within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. The office of the learned Registrar General, High Court, Calcutta shall disburse the amount according to the direction of the learned tribunal according to the prevalent Rules subject to the ascertainment of payment of the deficit court fees.

The instant FMAT 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.)