IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

01.09.2023
SL No.6
Court No. 551
Ali

F.M.A. 1578 of 2011

Dolena & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. R. Basu Roy
...for the appellants-claimants.

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

The instant appeal is preferred against the judgment and award dated 12th July, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Raiganj, Uttar Dinajpur in MAC Case No. 49 of 2000 under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellants being the claimant preferred an application before the learned tribunal under Section 166 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 duly insured by the insurance company. The matter was contested by the insurance company before the learned tribunal by filing written statement.

After hearing the parties the learned tribunal has awarded a sum of Rs. 2,00,000/- in favour of the claimants.

Being aggrieved by and dissatisfied with the said award the instant appeal has been preferred.

Learned advocate for the appellant submitted before this court that the learned tribunal has committed error by fixing the liability upon the owner of the vehicle instead of insurance company. He again argued that the predecessor of present appellant Mansur Ali had a business of selling and purchasing cattle at the relevant point of accident. He was returning from the hut with his cattle by boarding offending vehicle he being the owner of the goods cannot be said to be a gratuitous passenger. The learned tribunal has misconstrued the provision of law and awarded the compensation only Rs. 2,00,000/- and directed the insurance company to pay the compensation. He again argued that the income of the deceased was calculated to be Rs.1,500/- per month which is erroneous. The income of the deceased was stated in the claim application to be Rs. 2,000/-. He again argued that the deduction towards the personal expenses was done to $1/3^{rd}$ of his yearly income but it should be $1/4^{th}$ as there are four claimants according to the version of Hon'ble Supreme Court in ***Sarla Verma***. He again argued that the claimants being the fateful legal heirs of the deceased are entitled to get the future prospects and the general damages as per the direction of the Hon'ble Supreme Court passed in ***Pranay Sethi***. He again argued that the interest over the compensation amount was denied by the learned tribunal which is erroneous the finding of the learned tribunal regarding causing delay in proceeding the claim application is not correct. The LCR would reflect that the claimants were not responsible for causing delay or disposal of the claim application.

Learned advocate for the insurance company submitted that the entire claim case filed by the petitioners is doubtful; PW-1 including other PWs stating the manner of accident to be otherwise that of the police case. The version of PWs-1, 2 and 3 cannot be believed. If the version of the charge-sheet is believed then the deceased was a gratuitous passenger over the truck thus the insurance company is not liable to pay the compensation. He further argued that the owner of the offending vehicle instead of service of summon did not appear before the learned tribunal. He (owner) had the entire liability to pay the compensation, so the impugned award passed by the learned tribunal suffers no illegality.

Mr. Parimal Kumar Pahari on behalf of insurance company submits that the Hon'ble

Supreme Court in several decisions has adopted the principle of "pay and recovery" when the offending vehicle was well covered under the policy of insurance company at the time of accident.

Heard the learned advocate perused the materials on record perused the LCR as well as the paper book it appears to me that the entire case has stated by the claimants to the fact that at the time of accident the deceased was coming back from the hut on foot PWs-1, 2 and 3 has ascertained the factum but the insurance company from the inception is of a positive plea that the victim was travel in the offending vehicle while returning from the hut. There is no evidence to the fact that the truck was carrying the cattle at the time of accident; so it cannot be said that the victim was the owner of the goods carried by the truck thus the finding of the learned tribunal regarding the fact that the victim was a gratuitous passenger of the truck is correct. However in considering the decision of Hon'ble Supreme Court passed in ***Swaran Singh and Challa Bharathamma***. The insurance company may be directed to pay the compensation and in turn they are at liberty to recover the same from the owner of the vehicle.

In considering the just and proper compensation of this case; it appears to me that the claim application was filed for stating the income of the deceased to Rs.2,000/- per month learned tribunal has considered the income of the deceased to be Rs. 1,500/-. The learned tribunal has also observed that there were no documents of his income as well as no document of his business. It is true that a document of business is not possible for a cattle dealer. In the year 1992, the income of the deceased was taken by the learned tribunal Rs. 1,500/- is appears to be justified. Learned tribunal has deducted 1/3rd towards the personal expenses of the deceased; considering the numbers of dependency the deduction towards the personal expenses would be 1/4th according to the direction 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 considering the just and proper compensation of this case:-it appears to me that the monthly income was deceased was calculated to be Rs. 1,500/- so the yearly income comes to Rs. 18,000/- 1/4th is deducted towards his personal expenses so after deduction the yearly dependency comes to Rs. 13,500/-. The deceased was within the age group of 25-30 years so the claimants are entitled to get the future prospects which would be added to be 40% of the income comes to Rs. 7,200/- so after adding the future prospects the yearly dependency comes to Rs. 18,500/- the applicable multiplier in this case is 17. After multiplying the multiplier the award comes to Rs.3,21,300/-. The claimants are also entitled to get the general damages of Rs. 70,000/- adding all the award comes to Rs. 3,91,300/-.

The instant claim case was filed in the year 2000 it was disposed of in the year 2011. It appears that the trial of the claim case was started in the year 2006 but it was not concluded due to the other circumstances but not for the delay caused by the claimants. So, considering the fact it appears to me that the claimants are entitled to interest @ 6% per annum from the date of filing of the claim application.

The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim case that is from 27.04.2000 within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to receive the same according to the prevalent Rules subject to the ascertainment of payment of requisite Court Fees.

The instant FMA 1578 of 2011 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.)