28.8. 2023
item No.18
n.b.
ct. no. 551

FMA 2290 of 2013

Soma Mistri & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Saudur Rahaman,
.....for the appellants.

Mr. Parimal Kumar Pahari,
.... For the respondents.

The instant appeal has been preferred against the judgment dated 29.4.2013 passed by the learned Judge, 1st Court at Raiganj, Uttar Dinajpur in M.A.C. Case No. 105 of 2010 under Section 163A of the M. V. Act 1988.

The brief fact of the case is that the appellant being the claimants preferred the application under Section 163A of the M.V. Act before the learned Tribunal for getting compensation 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 is duly insured under the policy of respondent/Insurance Company.

Learned Tribunal after hearing both the parties and after taking into consideration the both oral and documentary evidence allowed the claim application in favour of the claimants directing the Insurance Company to pay the compensation amounting to Rs.1,59,500/-.

The claimants being aggrieved by and dissatisfied with the impugned award preferred the instant appeal for enhancement of the amount.

Learned advocate for the appellants submitted before this Court that the impugned award passed by the learned Tribunal has not considered the evidences on record and passed the award erroneously. He has submitted that the monthly income of the deceased was stated in the claim application to be Rs.3,000/- per month. Evidences were adduced to that effect but the learned Tribunal is of the view that no documentary evidences were adduced and no income proof certificate was produced. Thus, the notional income was deceased to Rs.15,000/- per month. He argued that the learned Tribunal must have passed the award on the basis of the income of the deceased to Rs.3,000/- per month.

Mr. Pahari, learned advocate appearing on behalf of the Insurance Company submitted before this Court that the impugned award passed by the learned Tribunal suffers noillegality. Admittedly, there are no evidences before the learned Tribunal to hold that the deceased used to earn Rs.3,000/- per month. The monthly income of the deceased was stated in the claim application to Rs.3,000/- per month. No scrape ofpaper was filed before the learned Tribunal, thus, the learned Tribunal has correctly assessed that the award after fixing the income of the deceased notionally to Rs.15,000/- per annum.

Heard the learned advocates and perused the impugned award passed by the learned Tribunal. It appears to me that the claim petition was filed stating occupation of the deceased to Khalashi. Learned Tribunal has no document of income of the said Khalashi. Employer was also not adduced to the evidences. The Khalashi is a job, wherein no such document of income is available. At this juncture, it is considered that no documents are possible from the side of the claimant to produce. However, the incident held in the year 2010. It appears to me that this Court is adopted a view in accordance with the other views of different benches of this Hon'ble Court in several occasions that when a person died in a road traffic accident in the year 2010 without any reliable document of this monthly income, the notional income of the deceased should be calculated to Rs.3,000/- per month.

Considering the above aspect, the same view is adopted. The income of the deceased calculated at Rs.3,000/- per month. Thus, just and proper compensation of this case is necessary to recust the award by modifying the judgment passed by the learned Tribunal.

1. Monthly income	Rs.3000/-
2. Annual income	Rs.36,000/-
3. Less Deduction 1/3rd personal Expenses	Rs.12,000/- Rs.24,000/-
4. Multiplier (15 X24,000)	Rs.3,60,000/-

5. General Damages	Rs.9,500/-
6. Total Compensation	Rs.3,69,500/-
7. Less already paid	Rs.1,59,500/-
8. Balance to be paid	Rs.2,10,000/-

The insurance Company is directed to pay the balance amount Rs.2,10,000/- along with 6% interest per annul from the date of filing of the claim application i.e. on July 19, 2010.

The Insurance Company is directed to pay the compensation within eight weeks from the date of passing of this order with the officer of the Registrar General, High Court, Calcutta. The claimants are liberty to receive the same according to the prevalent rules.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)