22.03.2023
Ct. No.237
SL Nos.26
& 27
Rup

FMA 1588 of 2013
The Oriental Insurance Company Ltd.
Vs
Mamtaj Bibi & Ors.

With

COT 69 of 2017

Mamtaj Bibi & Ors.
Vs.
The Oriental Insurance Company Ltd.

Mr. Parimal Kr. Pahari.
... For the Appellant in FMA 1588 of 2013

Mr. Subir Banerjee,
Mr. Sandip bandhyapadhyay
Mrs. Ruxmini Basu Roy
... For Cross Appellant/Claimant Respondent

This appeal is directed against the judgment and order passed by the learned Motor Accidental Claims Tribunal, 4th Court Jalpaiguri on 15th January, 2013 under Section 166 of the Motor Vehicle Act, 1988, whereby learned Tribunal awarded compensation to the tune of Rs. 2,35,038/- after applying multiplier 11 and notional income.

From the claim petition it is found that one Md. Jamiruddin died in Motor accident by involvement of one three wheeler Auto Van bearing No. WB 73/X- 1812 due to rash and negligent driving on 23.10.2010 at about 12 noon and for which Mekhliganj P.S. Case No.65 of 2010 dated 25.10.2010 under Sections 279/ 338 of the Indian Penal Code was started and subsequently Section 304A was added after death of the victim of Md. Jamirudin and after investigation charge-sheet was filed.

So far as accidental death is concerned, I find that the same was duly corroborated by P.W.2 (son of the deceased) and P.W. 3 (eye witness). That apart, the accidental death was further confirmed by the written complaint, seizure list, charge-sheet and post-mortem report.

The only issue in this appeal on behalf of the Insurance Company is that the relevant point of time the driver of the offending vehicle was possessing learner license and in that case violation of policy was committed. Accordingly, learned advocate on behalf of the Insurance Company submitted that Insurance Company is not liable to pay any compensation. On the other hand, learned advocate on behalf of the respondent has filed a cross-appeal, contending, inter alia, that learned Tribunal did not consider the future prospect and general damages. Pursuant to principle laid down by ***National Insurance Co. Ltd vs. Pranay Sethi and Ors.*** reported in ***2017 ACJ 2700***.

From the evidence of P.W.2 it appears that income of the deceased was Rs.1,500/- per month from his business, but there is no specific evidence on record regarding nature of business or any document thereof and that is why the learned Tribunal rightly held the income of the deceased was Rs.1,800/- per annum. It is true that learned Trial Judge did not allow the future prospect and general damages also erred in deducting 1/3rd towards living expenses instead of 1/4th.

In the aforesaid view of the matter and the facts and circumstances of the case, I modify the compensation amount as follows:-

Monthly Income	= Rs.1500/-
Annual Income (Rs.1500x12)	= Rs.18,000/-
Add future prospects 10% (18,000 x 10%)= 1,800/-	=Rs. 1,800/-
	Rs.19,800
Less deduction 1/4th of the amount (Rs.19,800/-)	= Rs.4,950/-
	= Rs.14,850/-
Multiplier 11 (Rs.14,850/-x 11)	= Rs.1,63,350/-
Add Medical Expenditure Granted by the Tribunal	= Rs. 93,538/-
	Rs.2,56,888/-
Add General Damages	Rs. 70,000/-
Total Compensation of	**Rs.3,26,888/-**

Therefore, the claimants are entitled total compensation to the tune of Rs.3,26,888/- along with the 6% interest per annum.

It is submitted on behalf of the Insurance Company that awarded amount of Rs.2,35,038/- has already been deposited with the office of the learned Registrar General, High Court, Calcutta. Appellant/Insurance Company is directed to pay rest amount of Rs.91,850/- along with 6% interest per annum from the date of filing of this application till the date of deposit of this amount.

Appellant/Insurance Company is also directed to pay interest at the rate of 6% per annum on the amount of Rs.2,35,038/- from the date of filing of the application till 17.05.2013.

Appellant/Insurance Company is directed to deposit the rest amount with the learned Registrar General, High Court, Calcutta within six weeks from date.

Learned Registrar General, High Court, Calcutta is directed to disburse the amount to the four claimants in equal share with proper identification and proof.

In view of the principle laid down in ***Oriental Insurance Co. Ltd. Vs. Nanjappan & Ors.*** reported in ***2004 ACJ 721*** and also in a case of ***Shamanna & Ors. V. The Divisional Manager, The Oriental Insurance Co.& Ors.*** reported in ***AIR 2018 SC 3726,*** I find no other alternative but to direct the appellant/Insurance Company to pay the entire compensation to the claimants/respondents and to recover it through execution proceedings.

With the aforesaid observation, the **FMA 1588 of 2013** along with **COT 69 of 2017** stand disposed of.

Let a copy of this order along with Tribunal records shall be transmitted back to the learned Tribunal immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)