IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

26.07.2023
SL No.34
Court No. 551
Ali

FMA 200 of 2023
IA No.:CAN/1/2015 (Old No.:CAN/4471/2015)

Pradip Kumar Rana & Anr.
Vs.
National Insurance Co. Ltd. & Ors.

Mr. Krishanu Banik,
Mr. Tathagata Banik,
Ms. Jaita Ghosh
.... for the appellants-claimants.

Mr. Samim Ahammed,
Mr. Aniruddha Singh
...for the respondent-insurance Co.

The instant appeal is preferred by the claimants against the judgment dated 11th October, 2012 passed by learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan in M.A.C. Case no. 27/129 of 2011.

The brief fact of the case is that the present appellants/claimants being the fateful parents of their son aged about 26 years who died in a road traffic accident on 07.03.2011 has preferred the claim case before the learned tribunal.

The insurance company contested the claim case by filing written statement; both oral and documentary evidences were produced by both the parties. After hearing the learned advocates and after perusing the evidences on record the learned tribunal has awarded a sum of Rs.3,26,000/- alongwith interest @ 6% per annum in favour of the claimants but directed the owner of the offending vehicle to pay the compensation. The owner is not paying the compensation for which the appellants are here before this appellate court with some grounds. Learned advocate for the appellants submitted before this court that the learned tribunal has placed the liability upon the owner of the vehicle which is not proper by virtue of the judgment of Hon'ble Apex Court passed in ***Swaran Singh, Baljit Kaur*** and ***Challa Bharathamma*** . He further pointed out that the learned tribunal has committed error in calculating the compensation in this case. The deceased was aged about 26 years and he used to earn Rs. 6,000/- per month from a business of "Rana Offset Printers". He admitted that no documentary evidences were produced before the learned tribunal but the learned tribunal should have considered the prayer of the fateful parents in assessing the compensation. He also pointed out that the learned tribunal has not awarded any amount in favour of the claimants towards the future prospects and general damages which they are entitled to get according to the judgment of Hon'ble Apex Court passed in ***Pranay Sethi***.

The learned advocate for the respondent-insurance company submitted before this court that the learned tribunal has committed no error in passing the impugned judgment. He pointed out that the insurance company has sufficiently to prove the fact that the driver of the offending vehicle had no valid driving licence to ply a commercial vehicle. The responsible officer of the RTO has deposed before the learned tribunal regarding the nature of the driving licence issued in favour of the driver of the offending vehicle, so there is no point to assail the merit of the impugned judgment. He prayed for dismissal of the instant appeal.

Heard the learned advocate perused the materials on record it is true that the opinion of the learned tribunal is correct regarding the finding that the driver of the offending vehicle was not possessing driving licence to ply a commercial vehicle. The driving licence was issued in his favour for light motor vehicle non transport. Considering the same I find no justification to entertain. However the view of the learned tribunal need be modified by virtue of the judgment of the Hon'ble Apex Court passed in ***Swaran Singh, Baljit Kaur*** and ***Challa Bharathamma*** . It appears from the observation of the Hon'ble Apex Court that in case of breach of any policy condition by the driver or the owner of the offending vehicle, the insurance company may pay the compensation to the claimants if the offending vehicle was well covered under the policy of the insurance company at the point of the accident. At the same time the insurance company may have the liberty to recover the same from the owner of the offending vehicle. The procedure of recovery has been specifically laid down in ***Challa Bharathamma and Swaran Singh***. Considering the view of the Hon'ble Apex Court, I think it necessary to modify the judgment of the learned tribunal.

It further appears to me that the income of the deceased was stated in the claim application to be Rs. 6,000/-, his occupation was stated to be employee of "Rana Offset Printers". It appears from the evidences and materials on record that the "Rana Offset Printers" is the proprietary business of the father of the deceased i.e. the claimants. So in this case there is no loss of business, thus I find necessary not to pass any order in respect of the income of the deceased except the notional income.

The deceased died in the year 2011 this court has adopted a view in the several cases of Motor Accident Claim that if any person died in the year 2011 to 2014 in RTA and in absence of any reliable documentary evidences of his income the notional income of that person would be Rs. 4,000/- per month. Considering the same the award passed by the learned tribunal is hereby modified.

The claimants being the parents are also entitled to the general damages to the tune of Rs. 30,000/- by virtue of the judgment of the Hon'ble

Supreme Court passed in ***Pranay Sethi*** they are also entitled to get the excess income towards future prospect to be assessed 40% upon the income of the deceased. In this case the deduction of personal living would be ½ as the deceased was a bachelor. Considering the same the award of this case is recasted as follows:-

Calculation of compensation

1.Monthly Income Rs.4,000/-

2.Annual Income
...(Rs.4,000/- X 12).............. Rs.48,000/-
3.Add future prospect be assessed
40% i.e..Rs. 19,200/-
Total.......................................Rs. 67,200/-
4. Less: deduction ½ on account of own
Personal living expenses....................Rs. 33,600/-

4. Multiplier apply 17
(Rs.33,600/-X 17)......Total Rs..................Rs.5,71,200/-

5. Add: General Damage
as per Pranay Sethi:
Loss of Estate.......Rs. 15,000/-
Funeral Expenses Rs. 15,000/-..........Rs. 30,000/-
Total........................Rs. 6,01,200/-

The respondent-insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 26.05.2011. The insurance company is further directed to pay the compensation through the office of learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. On such payment the claimants are at liberty to receive the same from the office of the learned Registrar General, High Court, Calcutta subject to ascertainment of payment of requisite court fees. The office of the learned Registrar General shall disburse the amount of compensation to the claimants vide two separate equal account payee cheques in the name of the claimants. The insurance company is at liberty to recover the above mentioned amount from the owner of the vehicle according to the procedure enshrined by the Hon'ble Supreme Court in the judgment of **National Insurance Company Ltd Vs. Swaran Singh & Ors.** reported in **2004 ACJ Page** 1.

The instant FMA 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.)