

22.11. 2023
item No.11
n.b.
ct. no. 551

FMA 1006 of 2022

**with
IA CAN 1 of 2017**

**Souresh Chandra Chaklanabia
Vs.
Sadhan Dutta & Anr.**

Mr. P. C. Maiti,
Miss. Raj Lakshmi Shaw,
..... appellant.
Mr. Rajesh Singh,
..... the respondent.

The instant appeal has been preferred against the judgment and award dated June 15, 2015 passed by the learned Judge, Motor Accident Claim Tribunal, 3rd Court, Nadia, Krishnagar in M.A.C. case No.578 of 2015.

The brief fact of the case is that the present appellant being the claimant filed an application before the learned Tribunal under Section 166 of the M.V. Act for getting compensation on the ground that his wife was died in a road traffic accident due the rash and negligent driving of the offending vehicle duly insured under the policy of the Insurance Company. The claim case was contested by the Insurance Company before the learned Tribunal.

After the hearing the parties, the learned Tribunal has dismissed the claim application on the ground that the claimant could not prove the connection between the alleged accident and the death of the deceased in this

instant case. Being aggrieved by and dissatisfied with the order of dismissal, the present appeal has been preferred by the claimant.

The learned advocate for the appellant submitted before this court that the learned Tribunal has committed an error by dismissing the entire application. This is the case of the claimants that while his wife was travel in a bus. The said bus(back portion of the bus) was hit by roadside bamboo and his wife/deceases was seated inside the bus and the bamboo struck her eyes. She sustained severe bleeding injury. Thereafter, she shifted to the hospital, wherein she succumbed to his injuries. The learned Tribunal has committed an error by dismissing the entire claim application on the ground that the Autopsy Surgeon of the post mortem report is of opinion that the deceased died due to the head injury. The observation of the learned Tribunal is totally incorrect. The deceased died in the road traffic accident. There is no other opinion to deny the fact that the victim did not suffer the injury while he was travelling in the bus. So, at this juncture, the appeal may be allowed by awarding just and proper compensation by setting aside the impugned judgment.

Learned advocate appearing on behalf of the Insurance Company submits that that impugned judgment passed by the learned Tribunal suffers no illegality. The learned Tribunal after considering the

materials on record and after considering the post mortem report as of opinion that the death was caused due to the head injury. The entire case of the claimant as well as the FIR contended that the deceased suffers injury on her eyes. There is no statement regarding the injury on the head of the deceased. So, the learned Tribunal could not connect the cause of the death of the victim with the so-called injury sustained by her in the accident.

He further argued that the impugned order passed by the learned Tribunal is speaking order, so the order cannot be set aside.

Heard the learned advocate and perused the materials on record, it appears that the alleged accident was held on August 15, 2008. On the basis of such accident, FIR was lodged after two days of such accident i.e. on August 17, 2008. The FIR was lodged by one of the brother of the deceased contending, inter alia, that while the deceased was preceded towards her paternal house from the Krishanagar through a private bus bound Krishanagar to Kalna Gate bearing WB 51/6953. At the time, the bus was running with high speed and rash and negligent manner, at the side of the road, there was a bamboo which was placed for drying the Jute. One side of the said bamboo directly hit the right side eye of his elder sister by which she sustained severe bleeding injury. It has been further stated in the FIR that the accident of such injury on of her eye. The deceased was firstly

admitted to the Santipur State General Hospital. Then, she was shifted to Narayan Netralaya and after that transferred to Mukundapur R. N. Tagore International Institute of Cardiac Science. An operation was held on August 6, 2008 regarding injury of the deceased at eye and brain. It was long operation and they were engaged there due to such operation. That is why, the de facto complainant could lodge the FIR on August 17, 2008. On the basis of such FIR, the police started investigation. During the course of investigation, the injured died in the said hospital on August 27, 2008. The investigation of the police ended in charge sheet against the driver of the offending vehicle, stating the fact that the deceased sustained injury in the way, which was stated in the FIR through a bamboo entered into bus and injured the deceased. The opinion of I.O. is that the accident was happened due to rash and negligent driving of the offending vehicle. After the demise of the victim, post mortem was conducted at Alipore Police Morgue where in Autopsy Surgeon is of the opinion that the death happened due to effect of head injury ante mortem in nature.

Learned advocate for the appellant argued that the opinion of the doctor regarding head injury is suffered by the deceased through the said accident.

Through, in the FIR, it was stated that the victim has sustained severe injury over her eyes but the degree of

injury was so high that the portion of the brain has been damaged. He pointed out that point nos. 2,3,4 of the post mortem report wherein the injury sustained by the deceased was mentioned. In perusing the point no.2 of the post mortem report where wound position, size and character was mentioned. It appears to me that the deceased was sustained a severe injury over her head also at time of accident. FIR has specifically stated regarding the conduct of long operation on the brain of the victim. It appears that the learned Tribunal has not specifically perused the post mortem report entirely. He has only concentrated over the opinion of the Autopsy Surgeon. If the learned Tribunal has perused the wound position and the size and its character as mentioned in the post mortem report. The order of the learned Tribunal would be otherwise.

Considering the same, in my opinion, the observation of the learned Tribunal regarding the non-connectivity of cause of death with the injury sustained by the deceased in the accident is not correct. I am of the view that the deceased sustained severe injury in her eye including her head at the time of the alleged accident and she died due to such injury sustained by her in the said accident.

Considering the same, I am of the view that the claimants being the husband of the deceased is entitled to get the just and proper compensation as prayed for. It

appears that in claim application, the claimant has stated that the monthly income of the deceased was Rs.9,000/- through business. No document of the business was produced before the learned Tribunal. Saral form for the financial year 2005-2006 was filed but the income of the deceased was not proved by calling any officials from the concerned income tax department. However, I have perused the LCR as well as the paper book, I find nothing material to consider the income of the deceased from business, it would be proper to assess the income of the deceased notionally.

Considering the same, I think it necessary that for just and proper compensation in this case income of the deceased should be Rs.3,000/- per month. The deceased was at the age of 44 years at the time of accident (Post mortem report). So, the applicable multiplier would be '14'. According to the observation of the Hon'ble Supreme Court in **Pranay Shetty** the claimants are entitled to get the future prospect and general damages. Considering the above aspects and just the proper compensation is assessed as follows:

1. Annual income	:	Rs.36,000/-
2. Future prospect 25%	:	<u>Rs.9,000/-</u>
Total income	:	Rs.45,000/-
3. Less 1/3 rd for personal Expenses	:	<u>Rs.15,000/-</u>
	:	Rs.30,000/-
4. Multiplier "14" (30,000X14)	:	Rs.4,20,000/-
5. Add general damages	:	Rs.70,000/-

Total : 4,90,000/-

The compensation comes to Rs.4,90,000/-. The Insurance Company is directed to pay the compensation along with interest 6% per annum from the date of filing of the claim application i.e. from September 21, 2008 within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit, the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the claimant according to the prevalent rules subject to the ascertainment of payment of requisite court fees.

Accordingly, FMA 1006 of 2022 is disposed of.

Connected applications, if any, are also disposed of.

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

(Subhendu Samanta, J.)