IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

07.12.2023
SL No.7
Court No. 551
Ali

FMA 932 of 2021
With
IA No. CAN/1/2022

Aparna Biswas & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
…………… for the appellant.

Ms. Sucharita Paul
…for the respondent /Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 29th September, 2018 passed by learned Judge, Motor Accident Claims Tribunal, 1st Court, Howrah, in M.A.C. Case no. 352 of 2011/819 of 2014 under Section 166 of the Motor Vehicles Act.

The brief facts of the case is that the present appellant being the claimants have preferred an application 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 duly insured under the policy of the Insurance Company.

The claim case was contested before the learned tribunal by the insurance company.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 3,87,500/- in favour of the claimants.

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

Learned advocate for the appellants submits that the award passed by the learned tribunal is not justified to the facts and circumstances of this case. The case goes to show that one heavy truck suddenly turned to the opposite side of the road and dashed a car wherein the deceased of this case was travelling alongwith other two passengers. By such accident the two persons including the deceased in the car has lost their life. The learned tribunal in assessing the compensation has considered that the driver of the car in which the victim was travelling was also responsible for the accident thus the compensation was apportionated to be 70% : 30%. The observation of the learned tribunal totally erroneous, the instant FIR was lodged against the offending heavy vehicle but there is no evidence on record to prove that the car in which the deceased victim was travelling was any way responsible in the accident but the learned tribunal has erroneously observed that the car was also responsible of 30%.

He further argued that the learned tribunal has awarded compensation without following guideline of the Hon'ble Supreme Court passed in

Pranay Sethi. In this case the future prospects and general damages have to be awarded. He again awarded the income of the deceased was calculated to be s. 3,000/- so the income has to be assessed to be Rs.4,000/-. Considering the date of the accident i.e. 26.6.2011.

Learned advocate appearing on behalf of the insurance company raised strong objection and submits that the learned tribunal has considered the entire materials on record including police papers. He also received the evidences on doc. After argument of the parties he has assessed the compensation; there is no error in apportioning the award to be 70% : 30%.

Heard the learned advocates perused the materials on record also perused the observation of the learned tribunal. It appears to me that in assessing the compensation the learned tribunal has framed as many as six issues. In deciding the issue No. 3. The learned tribunal is of view that the offending vehicle i.e. the truck is only responsible for the accident and the accident was the outcome of rash and negligent driving of the driver on the part of the offending vehicle. The police case which initiated on the basis of self-same accident ended in charge-sheet wherein the driver of the offending vehicle i.e. the truck was cited as solely responsible for such accident. It further appears to me that in deciding the issue No. 4, that whether the insurance policy was valid or not or whether the offending vehicle was insured under the valid insurance policy through the insurance company. The learned tribunal has misguided himself and came to an opinion that the opposite party/insurance company and the owner of the victim vehicle are both liable to pay the compensation to the extent of 70% : 30%. The observation appears to me without any basis and without any evidence.

The Hon'ble Supreme Court in **Usha Rajkhowa & Ors vs. M/S Paramout Industries & Ors.** The Hon'ble Supreme Court has observed that:

> ***Keeping these principles in mind, we find that there was absolutely no evidence to suggest that there was any failure on the part of the Car driver to take any particular care or that he had breached his duty in any manner. Such breach on his part had to be proved by Insurance Company a it was its burden and for that, the Punchanama of the spot, showing tyre marks caused by brakes, the Panchanama of the damaged car and the truck could have been brought on record. The Insurance Company has obviously failed to discharge its burden. We, therefore, respectfully follow the above mentioned judgment.***

On perusing the observation of the Hon'ble Supreme Court it appears to me that the learned tribunal apportions the liability of the accident erroneously and without any documents or evidences thus such observation is turned down.

It further appears to me that the learned tribunal has assessed the income of the deceased to be Rs. 3,000/- per month. It is the regular practice of the court that when a person died in a road traffic accident between the years 2011-2014. The notional income of the deceased has to be calculated to be Rs. 4,000/- per month. So, in this case, I think it necessary that the income of the deceased to be calculated to be Rs. 4,000/- per month.

The claimants are also entitled to get the future prospects and the general damages according to the observation of the Hon'ble Supreme Court in **Pranay Sethi**. In this case, the deceased was 42 years old at the time of accident and he was not engaged in a permanent job so the future prospects would be 25% of his establishment income. Learned tribunal has adopted the multiplier to be 15; but in considering the age of the victim to be 42 years and also following the direction of the Hon'ble Supreme Court in **Sarla Verma.** The applicable multiplier would be 14.

Considering the all aspects, it appears to me that the award passed by the learned tribunal need be modified.

The just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Monthly Income be assessed as........Rs.4,000/-
2. Add: 25% Future prospects Rs.1,000/-
Rs.5,000/-
3. Annual Income (Rs. 5,000 X 12).....Rs.60,000/-
5. Multiplier 14 X 14
Rs. 8,40,000/-
6. Less: 1/3rd for personal expenses...Rs. 2,80,000/-
Rs. 5,60,000/-
5. Add: General Damages ....Rs. 77,000/-
Rs.6,37,000/-

Less: award received........Rs. 2,71,250/-

Enhance award....... Rs. 3,65,750/-

After calculation the award comes to Rs. 6,37,000/-. The claimants has already received Rs. 2,71,250/-. The balance award comes to Rs. 3,65,750/-. The insurance company is directed to pay the balance award alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 19.09.2011 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 office of the learned Registrar General, High Court, Calcutta shall disburse the amount vide three equal account payee cheques in the name of the claimants according to the prevalent Rules subject to ascertainment of payment of requisite court fees.

LCR be sent down to the learned tribunal immediately.

The instant FMA 932 of 2021 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.)