

25.09.2023
SL No.61
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 639 of 2023
IA No: CAN/1/2016 (Old No.:CAN/10017/2016)**

**Kali Bagdi @ Pallisree Bagdi & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.**

Ms. Sima Das
...for the appellants-claimants.

Mr. Animesh Das
....for the respondent-Insurance Co.

The instant appeal is preferred against the judgment dated 27th day of January, 2014 passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Birbhum in M.A.C. Case no. 39 of 2010.

The brief fact of the case is that the present appellants being the claimants have preferred an application under Section 163-A of the MV Act before the learned tribunal for getting compensation on the ground that their predecessor has died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle.

The learned tribunal has heard the matter in presence of the insurance company and awarded a compensation of Rs.3,69,500/-alongwith 6% interest from the date of filing of the claim application.

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

The only sole ground to challenge the appeal is the income of the deceased.

The learned advocate for the appellants/claimants submits that the income of the deceased was calculated by the learned tribunal to be Rs. 3,000/- per month by fixing the daily income of Rs. 100/- each. She submits that the wife of the deceased appeared as PW-1 before the learned tribunal who specifically deposed that her husband used to earn Rs. 4,000/- per month. The learned tribunal has committed error not considering the deposition of PW-1. She argued that by virtue of the decision of Hon'ble Division Bench of this Court in ***Smt. Bilasini Mondal*** the oral evidence adduced by the claimant has to be considered. So, she prayed for enhancement of the compensation.

Learned advocate appearing on behalf of the insurance company submits that the learned tribunal has not committed any error in passing the impugned award. He argued that the same argument was advanced before the learned tribunal. No documentary evidence was adduced by the learned tribunal; after perusing the evidences both oral and documentary learned tribunal has fixed the income of the deceased to be Rs. 3,000/- per month. He submits that this court in several occasions as adopted the view that in absence of the any cogent evidence the income of the deceased would be Rs.

3,000/- per month. He further argued that the claimants has submitted that the claim application before the learned tribunal claiming a compensation of Rs. 4,00,000/-; the compensation was awarded alongwith the interest, the compensation is more than Rs. 4,00,000/-. So, at this juncture, there is no merit to entertain the instant appeal.

Heard the learned advocates perused the paper book, evidence of PW-1 also materials on record, it appears to me that the PW-1 i.e. the wife of the deceased appeared before the learned tribunal stating the fact that her husband used to earn Rs. 4,000/- per month. No documentary evidences were produced. I am also aware about the direction of the Hon'ble Division Bench of this court passed in **Smt. Bilasini Mondal**.

It appears to me that the deceased was a labour of a crutcher machine it is true that the labours were worked under a contractor in a crutcher machine. The payment given by the contractors did not support any documentary evidence, still then no cogent evidence is there in respect of income of the deceased. The employer or the contractor may come to depose the income of the deceased. The principle laid down by this court in several occasions that in absence of any documentary evidences or any reliable cogent evidence when the deceased was died upto 2010 the

notional income of the deceased is to be calculated to be Rs. 3,000/- per month; when the deceased died within 2011-2014 the notional monthly income would be calculated by fixing the monthly income to be Rs. 4,000/- per month and from year 2015 it would be Rs. 5,000/-per month.

Considering the ratio, it appears to me that the learned tribunal has considered the income of Rs. 3,000/- per month. I find no infirmity the impugned order. I find no justification to entertain the instant appeal. There is no merit to pass any further order for enhancement of the impugned order.

Accordingly, the appeal became meritless and it is dismissed.

Accordingly, the instant FMA 639 of 2023 is dismissed.

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.)

