12.09.2023
Item No.9
Ct. No.551
S.A.

FMA 125 of 2023
with
CAN 2 of 2023

Sabita @ Sabita Bala Pramanik & Ors.
-vs-
Oriental Insurance Co. Ltd. & Ors.

Mr. Jayanta Kumar Mondal
…for the appellants
Mr. Rajesh Singh
…for the respondent

The instant appeal has been preferred against the judgement and award dated 23rd May, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Purba Medinipur in MAC Case No. 328 of 2010.

The brief fact of the case is that the present appellants being the claimants filed one application before the learned Tribunal under Section 166 of the M.V. Act 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 by the insurance company before the learned Tribunal.

After hearing the parties the learned Tribunal was awarded a sum of Rs.10,89,500/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award of compensation, the present appeal was preferred for enhancement.

Learned advocate for the claimants/appellants submits that the learned Tribunal has not considered the facts and circumstances of this case and came to an erroneous finding. He submits that the learned Tribunal has considered the personal deduction of $1/3^{rd}$ of his income which is improper. The number of claimants in this case is four. According to the observation of the Hon'ble Supreme Court in **Pranay Sethi**, following the observation of Hon'ble Supreme Court in **Sarala Verma**, the deduction of personal expenses should be $1/4^{th}$. He also cited a decision of Hon'ble Supreme Court passed in **Kirti & Anr. vs. Oriental Insurance Co. Ltd**. and submits that the Hon'ble Apex Court has decided the matter finally to the effect that if the legal heirs of the deceased is more than three, then the deduction of personal expenses should be $1/4^{th}$.

I have gone through the decision passed in **Kirti** specially in paragraph 10 and 11.

Learned advocate for the Insurance Company submits that the learned Tribunal has not committed any error in passing the impugned judgement. The mother of the deceased has expired in this case. So, the deduction would be $1/3^{rd}$.

Heard the learned advocate. Perused the materials on record and perused the judgement passed in **Kirti**. The Hon'ble Supreme Court has decided the issue finally and held that the demise of any legal heir during the pendency of the proceeding shall not held the number of claimant disentitle. It appears that the number of claimants were four at the time of filing the instant claim application. In this case, the personal deduction would be $1/4^{th}$. The deceased was an employee of Haldia Dock. So, the claimants are entitled to get the future prospects i.e. 15% of his actual income. It further appears that the learned Tribunal has adopted the multiplier as 5 in this case but according to the observation of the Hon'ble Supreme Court in **Sarala Verma**, the multiplier of this case would be 9 considering the age of the victim 57 years at the time of accident.

Learned advocate for the appellants also argued that for general damage Rs.70,000/- was awarded by the Hon'ble Apex Court. He also argued in the decision of Pranay Shethi, it has been specifically mentioned that in every three years it has to be enhanced 50% more. The said principle was also followed by the Hon'ble Supreme Court in **Rasmika and Ors. vs. National Insurance Company**.

Considering the case it appears that the claimants are also entitled to get 10% for the general damage over Rs.70,000/-. Considering the entire circumstances it appears that the award passed by the learned Tribunal is required to be modified.

For the just and proper compensation of this case, the calculation is as follows:-

Computation of Awarded Amount

Yearly income (Rs.40,000 X 12)..........	Rs.4,80,000/-
Add: Future Prospect (15%)..................	Rs.72,000/-
Less: $1/4^{th}$ for personal Exp.............	Rs.5,52,000/-
	Rs.1,38,000/-
Multiplier '9'	Rs.4,14,000/-
	X 9
Add: General Damages	Rs.37,26,000/-
(15,000+40,000+15,000)+10%	Rs.77,000/-
Less: Awarded amount	Rs.38,03,000/-
Already paid	Rs.10,89,500/-
Enhanced Amount	Rs.27,13,500/-

Total compensation comes to Rs.38,03,000/-. The claimants have already received an amount of Rs.10,89,500/-. So, the balance amount comes to Rs.27,13,500/-.

The Insurance Company is directed to pay the balance compensation along with 6% interest per annum from the date of filing of the claim application i.e. from 9th November, 2010 within eight weeks from the date of passing of this order with the office of the learned Registrar General of the High Court, Calcutta.

On such deposit, the claimants are entitled to receive the same from the office of the learned Registrar General, High Court, Calcutta on usual terms and conditions subject to ascertainment of payment of requisite court fees.

FMA 125 of 2023 is disposed of.

The connected CAN application, if any, is also disposed of.

The LCR be sent down forthwith to the office of the learned Tribunal.

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

(Subhendu Samanta, *J.*)