05.12.2023
09
AN/Ct. No.551

FMAT(MV) 611 of 2022
with
I.A. No. CAN 1 of 2023

Sumitra Tanti @ Sabita Tanti & Ors.
versus
The Shriram General Insurance Company Limited & anr.

Mr. Subir Banerjee
Mr. Sandip Bandopadhyay
Ms. Ruxmini Basu Roy
Mr. Arghya Bhattacharya
... for the appellants

Mr. Sayak Majumder
... for the respondents

The instant appeal is preferred against the judgment and award dated 23.12.2019 passed by the learned Judge, Motor Accident Claim Tribunal, Islampur, Uttar Dinajpur in MAC Case No. 143 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that the appellants being the claimants had 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 was contested by the Insurance Company by filing written statement. The learned Tribunal after hearing the parties and after receiving the evidence awarded a sum of Rs. 7,34,800.00 in favour of the claimants and directed the Insurance Company to pay the compensation @ 6% p.a. from the date of filing of the claim application to the date of award.

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

Learned counsel for the appellants submits that only a single point is involved in the appeal to determine. The instant appeal has been preferred only by challenging the income of the deceased which was calculated by the learned Tribunal. The appellants argued that the claim case was filed stating the income of the deceased to be Rs. 6000.00 p.m. The deceased was a driver. The owner of the offending vehicle that is the employer of the deceased deposed before the learned Tribunal as P.W. 3. During his examination, he specifically stated before the learned Tribunal that he used to pay Rs. 10,000.00 p.m. as a salary to the deceased alongwith Rs. 300.00 as incidental expenses when the driver was in a trip. Learned counsel for the appellant further submits that the entire materials on record was placed before the learned Tribunal but the learned Tribunal denied all the materials and assessed the compensation by fixing the monthly salary of the deceased notionally to be Rs. 3000.00 p.m. He argued that the observation of the learned Tribunal regarding the income of the deceased is erroneous. Thus, the award passed by the learned Tribunal need be modified.

Learned counsel for the respondent Insurance Company submits that from the cross-examination of the P.W. 3, it would be revealed that the employer of the deceased used to earn Rs. 30,000.00 p.m. It is quite unbelievable to ascertain the fact that a person who used to earn Rs. 30,000.00 p.m. will pay Rs.

10,000.00 to one of his employees. He again argued that the learned Tribunal has considered all materials and after observing the directives of Hon'ble Supreme Court in several decisions, he observed that the income of the deceased can be calculated at Rs. 100.00 per day i.e. notionally Rs. 3000.00 p.m. He further argued that there are no infirmities in the impugned award, and the instant appeal has got no merit and needs to be dismissed.

Heard learned counsel for the parties and perused the materials on record.

It appears that the learned Tribunal has assessed the compensation by fixing the income of the deceased notionally to be Rs. 3000.00 p.m. It is the fact that notional income is to be calculated when there is no specific proof of income of a deceased and there is no evidence on record. In this case it is a plea of the claimants that the deceased used to earn Rs. 6000.00 p.m. and he was a driver. The employer has appeared before this Court to ascertain the fact that the deceased was a driver. Apart from the statement of the employer, no ledger book or the salary slip was filed; there are nothing to believe that by virtue of documentary evidence that the deceased used to earn Rs. 10,000.00 p.m. However, it was correctly proved before the learned Tribunal that the deceased was a driver of the offending vehicle and that cannot be equated with an unskilled labour. So, in this case, the assessment of the income of the deceased to be Rs. 3000.00 p.m. appears to be not justified.

It appears that this Court adopted a view that when a person died in an accident after the year 2015, the notional income is adopted at Rs. 5000.00 p.m. In this case, the deceased was a driver and he died in the year 2016. So, in this case, the income of the deceased is required to be calculated Rs. 5500.00 p.m. On that score, the award passed by the learned Tribunal needs modification. It further appears that the learned Tribunal has awarded the compensation alongwith 6% interest p.a. from the date of filing of the claim to the date of award. The observation is also erroneous and according to the rule, the claimants are entitled to get the award alongwith interest from the date of filing of the claim application to its actual realization. Therefore, the same view has to be adopted. The just and proper compensation of this case be assessed as follows:

Income	Rs. 5,500.00
Future Prospect 40%	(-) Rs. 2200.00
	Rs. 7700.00
Annual Income	x 12
	Rs. 92400.00
Deduction ¼	Rs. 23100.00
	Rs. 69300.00
Multiplier (x 16)	Rs. 1108800.00
General Damages	(-) Rs. 70,000.00
	Rs. 11,78,800.00
Less Award passed by the Tribunal already paid	(-) Rs. 7,34,800.00
	Rs. 4,44,000.00

Hence, the award comes to Rs. 11,78,800.00. Learned Tribunal has already awarded Rs. 7,54,800.00. The balance award comes to Rs. 4,44,000.00.

The Insurance Company is directed to pay the balance sum alognwith 6% interest p.a. from the date of filing of the claim application within a period of six weeks from the date of passing of this award through the Office of the learned Registrar General of this Court. On such payment, the Office of the learned Registrar General shall disburse the amount according to the prevalent rules in favour of the claimants after ascertaining the payment of deficit fees, if any.

With the above observations and directions, the instant appeal alongwith the connected application are **disposed of**.

(Subhendu Samanta, J.)