IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

01.09.2023
SL No.1
Court No. 551
Ali

F.M.A. 3253 of 2013
IA No.CAN/1/2013 (Old No.CAN/11177/2013)

Sabina Yasmin Begum & Ors.
Vs.
The National Insurance Company Ltd. & Anr.

Mr. Amit Ranjan Roy
…for the appellants-claimants.

Mr. Afroze Alam
……….for the insurance Co.

The instant appeal is preferred against the judgment and award dated 11th April, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Purba Bardhaman in MAC Case No. 33 of 2011 under Section 166 of the M.V. Act. The appellants being claimants have preferred an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation from the insurance company on the ground that the their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured by the insurance company.

The learned advocate for the appellants submits that the instant appeal has been preferred only for enhancement of the award.

He submits that the income of the deceased was taken notionally to be Rs. 3,000/- per month.

The occupation of the deceased was stated in the claim application to be driver of a lorry and having self transport business from his own lorry. The income of the deceased was stated to be Rs. 9,000/- per month. He argued that the avocation of driving/cleaning by the deceased was well proved in this case but the learned tribunal has erroneously adopted the income of the deceased notionally. He argued that the income of the deceased should not be calculated according to the notional income. He again argued that the claimants are entitled to get the benefit of the judgment of the Hon'ble Apex Court passed in ***Pranay Sethi*** regarding the future prospects and the general damages.

Learned advocate for the insurance company submits that the impugned award passed by the learned tribunal suffers no illegality. The claimant has not produced any document regarding the business or so called driving licence of the deceased. Thus, the learned tribunal has correctly assessed the compensation on the basis of notional income of the deceased to be Rs. 3,000/- there is no chance to interfere with the impugned award.

Heard the learned advocate it appears to me that the learned tribunal in considering the entire case has awarded a sum of Rs. 4,17,500/-. Learned tribunal has also ordered to pay the compensation in favour of the wife and daughter of the deceased i.e. appellant Nos. 1 and 2. In assessing the compensation the learned tribunal has calculated the income of the deceased to be Rs. 3,000/- per month.

In considering the submission of the learned advocate for the appellant it appears to me that the charge sheet has been submitted stating the deceased to be cleaner/co-driver of the offending truck. The accident was happened in Andhra Pradesh. The deceased was with the driver in the said truck. Whether he was a cleaner or co-driver it is not proved but it has sufficiently proved that he was one of the employee of the truck who accompanied the driver out of State. The fact was not denied by the insurance company. The police papers were crystal clear regarding the avocation of the deceased to be a co-driver. Considering the same, I think it necessary to hold that the learned tribunal has committed error for holding the income notionally to Rs. 3,000/- per month.

In considering the entire facts and circumstance of this case, the income of the deceased should be Rs. 4,500/-. It appears that the learned tribunal has awarded the compensation in favour of the wife and daughter of the deceased thus in this case the applicable deduction would be 1/3rd. According to the decision of the Hon'ble Supreme Court Constitutional Bench ***(Pranay Sethi),*** the claimants are also entitled to get the future prospects i.e. 40% of his establish income and the general damages of Rs. 70,000/-. So the just and proper compensation of this case is as follows:- The income of the deceased was calculated to be Rs. 4,500/- per month so the yearly income comes to Rs. 54,000/-. 40% of which (Rs.21,600/- is added) so the yearly award comes to Rs. 75,600/-, 1/3rd is deducted towards the personal expenses, so after substracting Rs.25,200/- it appears to Rs.50,400/-; the applicable multiplier in this case is 16. So, after applying multiplier the award comes to Rs. 8,06,400/- the general damages of Rs. 70,000/- is also added, so the award comes to Rs. 8,76,400/- the tribunal has already awarded a sum of Rs. 4,17,500/- which was received by the claimants alongwith interest. Such amount is deducted from the compensation so the balance award comes to Rs. 4,58,900/-

The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim case that is from 20.07.2010 within eight weeks from the date of passing of this order with 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 according to the direction given by the learned tribunal specifically in the name of the appellant/claimant Nos. 1 and 2 in equal shares according to the prevalent Rules subject to the ascertainment of payment of requisite Court Fees.

The instant FMA 3253 of 2013 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.)