IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

03.10.2023
SL No.7
Court No. 551
Ali

FMAT 1236 of 2013
IA No.:CAN/1/2014 (Old No.:CAN/6765/2014)

Majira Bibi & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Ors.

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

Mrs. Sucharita Paul
…for the respondent No. 1-Oriental Insurance Co.

Mr. Saibalendu Bhowmick,
Mr. Raj Sekhar Basu
…for the respondent No. 2- National Insurance Co.

Ref.:CAN-1 of 2014

The learned advocate for the appellants submits that there is delay in preferring the instant appeal and there is no intentional laches on behalf of the appellants to prefer the appeal in delay so he prayed for condonation of the delay.

Learned advocates for the respondent insurance companies raised strong objection. Considering the submission, the delay in preferring the instant appeal is hereby condoned.

Accordingly, CAN 1 of 2014 is disposed of.

FMAT 1236 of 2013

The instant appeal is preferred against the judgment and award dated 13th Day of March 2013 passed by learned Judge, Motor Accident Claims

Tribunal, Krishnagar, Nadia in MAC Case no. 329 of 2007.

The brief fact of the case is that the present appellants being the claimants preferred an application before the learned tribunal for getting compensation under Section 163-A of the M.V. Act 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 companies.

The claim was contested by both the insurance companies.

The learned tribunal has heard the matter and is of opinion that there are contributory negligence on behalf of the two vehicles duly insured under the two insurance companies. Thus, he awarded compensation against both the insurance companies and directed both of them to pay the compensation equally. The learned tribunal has awarded the compensation amounting to Rs. 1,19,500/-.

Being aggrieved by and dissatisfied with the quantum of the compensation the present appeal has been preferred.

The learned advocate for the appellants submits that the learned tribunal has observed that the deceased was a vegetable vendor and used to earn Rs.100/- per day i.e Rs. 3000/- per month. But at the time of calculation of the compensation he adopted the notional income of the deceased to be Rs. 15,000/- per year. He argued that the observation of the learned tribunal is erroneous. The income of the deceased should be calculated to be Rs. 3000/- per month.

The learned advocate for the insurance companies raised strong objection and submits that the learned tribunal has not committed any error. There are no documents to prove the income of the deceased. No evidences were adduced by the claimants to prove the income of the deceased. At this juncture, the learned tribunal has adopted the view according to the provision of Section 163-A of the M.V. Act and the compensation was awarded on the basis of notional income i.e. Rs. 15,000/- per annum.

Heard the learned advocate at appears that the claim application has been filed by the claimants stating the occupation of the deceased to be a business and monthly income was stated to be Rs. 3,000/- per month. During the evidence of PW-1 i.e. wife of the deceased stated that the deceased was a vegetable vendor. Learned tribunal after observing the evidences on record and after also observing of the cross-examination of the insurance companies has held that the income of the deceased cannot be less than Rs. 100/- per day. However, at the time of calculation of the compensation the income of the deceased towards calculated to be Rs. 15,000/- per annum. The income of the deceased as fixed for the purpose of compensation i.e. Rs. 15,000/- per annum is erroneous to that of the finding of the learned tribunal itself. The business of vegetable vendors is such a nature of job where a document of income is not possible. Thus, I am of the view, the income of the deceased should be Rs. 3,000/- per month for the purpose of calculation of the compensation so, I think it necessary to modify the impugned award to that effect.

Considering the entire aspects the just and proper compensation is recasted as hereunder:-

Calculation of compensation

1. Monthly Income be assessed as.............Rs.3,000/-
2. Less: 1/3rd
   towards personal & living expenses Rs.1,000/-
   Rs. 2,000/-
3. Annual Income be assessed as
   ...(Rs.2,000/- X 12)............ Rs.24,000/-
4. Multiplier 11
   (Rs.24,000/-X 11).....................................Rs.2,64,000/
5. Add: General Damages ....Rs. 9,500/-

Rs. 2,73,500/-

Award passed by Tribunal**.............Rs.1,19,500/-**

Enhanced Sum..........................Rs. 1,54,000/-

The total award comes to Rs.2,73,500/-. The learned tribunal has already awarded to be Rs.1,19,500 so the excess award comes to

Rs.1,54,000/-. It appears that the claimants are directed to provide the number of the accounts of the respective claimants but they have not supplied the same. Consequently, no compensation has been made in their favour. However, the award of compensation passed by the learned tribunal must have coupled with some interest. So, it is ordered that the compensation passed by the learned tribunal i.e. Rs. 1,19,500/- shall carry interest @ 6% per annum from the date of filling of the claim application i.e from 6.7.2007 till the May, 2013. The excess some of Rs. 1,54,000/- shall also carry 6% interest from the date of filing of the claim application till its actual realization which is ordered to be paid within 10 weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta; which shall be paid equally by both the insurance companies. On such payment the office of the learned Registrar General, High Court, Calcutta is directed to pay the sum in favour of the claimants vide six equal account payee cheques.

It appears that the instant appeal is being disposed of at the stage of FMAT and LCR is not called for thus it is not clear to this court whether any compensation was paid to the claimants or not; if the compensation has already been paid which was awarded by the learned tribunal. The insurance companies are directed to pay the only enhanced amount alongwith the interest as directed.

The instant FMAT1236 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.)