IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

06.09.2023
SL No.45
Court No. 551
Ali

F.M.A. 632 of 2022

Smt. Shephali Utthasini & Ors.
Versus
The United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellant-claimant.

Mr. Sanjoy Paul
....for the insurance Co.

The instant appeal is preferred against the judgment and award dated 28th of August, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Purba Medinipur in MAC Case No. 55 of 2010.

The brief fact of the case is that the present appellant being the claimants have preferred an application 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 matter was contested by the insurance company and the learned tribunal after hearing both the parties has awarded a sum of Rs. 3,69,500/- amongst which Rs. 50,000/- was already received by them under Section 140 of the M.V. Act. Thus, they were already received a sum of Rs. 3,19,500/-

Being aggrieved by and dissatisfied with the impugned award the present appeal was preferred.

The learned advocate for the appellants/claimants submitted before this court that the impugned award passed by the learned tribunal suffered illegality. The learned tribunal has assessed the compensation by fixing the monthly income of the deceased to be Rs. 3,000/- per month. The deceased was a serviceman working at "Samanta Enterprise" Haldia wherefrom he used to earn Rs. 4,000/- per month. He further submitted that the income of the deceased must have been calculated Rs. 4,000/- per month as there were some oral evidences to that effect. He further argued that the recent claimants are the fateful legal heirs of the deceased and the sole bread earner of their family was died due to rash and negligent driving of the driver of the offending vehicle. So he prayed for necessary order for compensation fixing the income of the deceased to be Rs. 4,000/- per month.

Learned advocate appearing on behalf of the insurance company submits that the learned tribunal has passed the impugned award correctly. There is no infirmity in the order passed by the learned tribunal. The learned tribunal has passed a speaking order to that effect. There is no documentary evidence regarding the income of the deceased thus the learned tribunal has correctly assessed the income of the deceased notionally to be Rs. 3,000/- per month. He further argued that the learned tribunal has deducted 1/3rd towards the personal expenses of the deceased it should be 1/4th; considering the number of the claimants to be more than three.

Learned advocate for the appellants also submits that the adopted multiplier in this case would be 14 instead; the learned tribunal has adopted 15 multiplier.

Heard the learned advocate perused the materials on records it appears to me that the income of the deceased mentioned in the claim application to be Rs. 4,000/- per month. No document of income was produced. Thus, the learned tribunal has considered the income of the deceased to be Rs. 3,000/- per month. I am at par with the view of the learned advocate for the insurance company that the learned tribunal has correctly awarded the compensation by fixing the income of the deceased to be Rs. 3,000/- per month.

However, the claimants are also entitled to get the future prospects as well as the general damages by virtue of the observation of the Hon'ble Supreme Court passed in ***Pranay Sethi***. The deceased was within the age group of 42-45 years at the time of accident thus the applicable multiplier in this case would be 14 instead of 15. In this case, there are four claimants so the deduction towards the personal expenses of the deceased would be 1/4th instead of 1/3rd.

Considering the entire materials on record, I think it necessary that for just and proper compensation of this case the impugned award passed by the learned tribunal need be modified.

On that score, the just and proper compensation of this case is as follows:-

Calculation of compensation

1. Monthly Income Rs.3,000/-
2. Annual Income (Rs.3,000/- X 12)...........Rs.36,000/-
3. Add: 25% Future Prospects......................Rs.9,000/-

   Total Annual Income ....Rs. 45,000/-
4. Less : 1/4th deduction towards
   personal expenses Rs.11,250/-

   Annual Loss of dependency................Rs. 33,750/-
5. Multiplier 14 (Rs.33,750 X 14)............Rs.4,72,500/-
6. Add: General Damages Rs.70,000/-

   Total Compensation ....Rs. 5,42,500/-
7. Less: Awarded by Tribunal & paid.......Rs. 3,69,500/-

   Enhancement...........................Rs. 1,73,000/-

The insurance company is directed to pay the balance amount of compensation amounting to Rs. 1,73,000/- alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 18.02.2010 within eight weeks from the date of passing of this order through the learned tribunal.

The insurance company is directed to disburse the amount in the name of the claimants/appellants Nos. 1, 2 and 3 vide 3 (three) equal account payee cheques subject to the ascertainment of payment of requisite Court Fees.

The instant FMA 632 of 2022 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.)