1.12. 2023
item No.9
n.b.
ct. no. 551

FMA 784 of 2023

Omrawati Devi & Ors.

Vs.

The National Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy,

..... appellants.

Mr. Sanjay Paul,
Ms. Jaita Ghosh,

... for the respondent.

The instant appeal has been preferred against the judgment and award dated March 13, 2020 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Asansol, in M.A.C. Case No.03 of 2012(12 of 11) under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellants being the claimants preferred an 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 offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company and after hearing the parties, the learned Tribunal has allowed the claim application in favour of the claimants but only awarded to Rs.80,428/- along with interest 6% per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned judgment, the present appeal has been preferred.

Learned advocate for the appellant submits that the instant appeal has been filed against the observation of the learned Tribunal wherein the income of one of the son of the deceased who got employed under compassionate appointment under the same employer has been deducted from the income of the deceased. He further argued that compensation awarded by the learned Tribunal is actually erroneous. Learned Tribunal should not have deducted the monthly income of one of the sons of the deceased from the amount of compensation. In support of his contention, he cited a decision of Hon'ble Supreme Court passed in **Vimal Kanwar & Ors. Vs. Kishore Dan & Ors.** reported in **2013 SAR(Civil) 584.**

Learned advocate for the Insurance Company submits that the proposition of law has been settled by the Hon'ble Supreme Court in **Vimal Kanwar(supra)** wherein it has been specifically observed that the compassionate appointment of any of the family member of the deceased shall not be taken into consideration at the time of assessment the compensation in a Motor Accident Claim case. He further argued that the income assessed by the learned Tribunal is not correct, the tax component has to be deducted. He again argued that

1/4th has been deducted towards personal expenses but in this case there are only three claimants. So, considering the number of claimants, the deduction on personal expenses would be 1/3rd in instead of 1/4th.

Heard the learned advocate and perused the observation of the learned Tribunal, it appears that the learned Tribunal has assessed the compensation by virtue of income of the deceased and thereafter came to an opinion that one of the son of the deceased has got employed under the same employer(ECL) and get benefit of income of Rs.17,565/-, which was deduced from the income of the deceased for the calculation of amount of compensation. The Hon'ble Supreme Court in **Vimal Kanwar(Supra)** has specifically answered the question and it is the present proposition of law that the salary received by any of the family members of the deceased on compassionate appointment does not come within the periphery of compensation under Motor Vehicles Act and it cannot be termed as pecuniary advantage.

Considering the observation of the Hon'ble Supreme Court, it appears to me that the learned Tribunal has committed error in passing the impugned award. Accordingly, the award passed by the learned Tribunal is hereby set aside.

From the pay slip the gross salary of the deceased was Rs.23,246/- wherefrom Rs.300/- and Rs.130 is deducted towards the income tax and professional tax respectively. So, after deduction of the tax component, the monthly income of the deceased appears to be Rs.22,816/-. The claimant was in fixed salary, so, according to the direction of Hon'ble Supreme Court in **Pranay Shetty** he is entitled to get 30% of his actual salaried income as future prospects. Considering the age of the deceased to be 47, applicable multiplier in this case would be 13; the claimants, however, entitled to get Rs.70,000/- towards the general damages.

For the purpose of proper compensation of this case; the award is recusted as follows:

1. Monthly income	: Rs.22,816/-
2. Annual income	: Rs.2,73,792/-
3. Add 30% future prospect	: Rs.82,137/-
	: Rs.3,55,929/-
4. Less 1/3rd personal Exp	: Rs.1,18,643/-
	: Rs.2,37,286/-
5. Multiplier 13(47 yrs Old)	: Rs.30,84,718/-
6. Add General Damages	:Rs.70,000/-
	:Rs. 31,54,718/-
7. Less award if already received	: Rs.80,000/-
Balance	: Rs.30,74,290/-

The award come to Rs.31,54,718/-. The learned Tribunal has already awarded Rs.80,428/-. So, the claimants are entitled to get balance Rs.30,74,219/-. The LCR is not called, so it is quite impossible to assess whether the awarded amount was paid or not. Accordingly, the Insurance Company is directed to pay the entire awarded amount if the amount already awarded was not paid.

The Insurance Company is directed to pay the compensation along with 6% interest per annum from date of filing of the claim application i.e. January 17, 2011 within six weeks from the date of passing of this order through the officer of the Learned Registrar General, High Court, Calcutta. On such deposit, the claimants are liberty to received the same according to the prelevant rules and the officer of the learned Registrar General, High Court Calcutta shall disburse the amount after ascertaining the fact that the DCF has sufficiently paid.

Accordingly, FMA 784 of 2023 is disposed of.

Connected application, if any, are also disposed of.

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

(Subhendu Samanta, J.)