FMA 575 OF 2024
With
IA No. CAN 2 of 2024
The Oriental Insurance Co. Ltd.
- Vs -
Sefali Dolai (Dandapat) & Ors.

15.05.2024
Sl no. 6
Ct no. 25
P.M.

Mr. Rajesh Singh
... for the Appellant
Mr. Amit Ranjan Roy
... for the respondents.

The instant appeal is preferred against the judgement and award dated 23rd September, 2022 passed by the learned Judge, Motor Accident Claim Tribunal, A.D.J. 4th Court, Paschim Medinipur in MAC Case No. 138 of 2016.

The brief fact of this case is that on 16th February, 2016 at about 3 p.m. when the victim of this case namely Dulal Dolai was proceeding to his house along extreme left side of the pitch road by walking, at the time one Maruti Altro car being registration No. WB 36A/7654 coming from Hatibari towards Asui with a very high speed, dashed the victim from behind. As a result deceased sustained grievous injury on head and his body and thereafter admitted to the Gopiballavpur Health Centre and declare by doctor as Dead.

The widow, minor son and the parents of the deceased preferred an application under Section 166 of the Motor Vehicle Act before the learned Tribunal for getting compensation on the ground that the accident happened solely due to rash and negligent driving of the driver of the offending vehicle. The claim was contested by the Insurance Company by filing written statement.

After hearing the parties and after receiving the evidences the learned Tribunal has awarded a sum of Rs. 21,08,400/- towards compensation and directed the Insurance company to pay the compensation together with regular banking rate of interest.

Being aggrieved by and dissatisfied with the said award the instant appeal is preferred by the Insurance Company.

Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that the instant appeal is preferred only to challenge the quantum of compensation as assessed by the learned Tribunal.

Firstly, he submits that the learned Tribunal has assessed the compensation by fixing the monthly income of the deceased to be Rs. 8,000/-.

He argued, there is no specific evidence regarding income of the deceased, but the learned Tribunal has assessed the income of the deceased erroneously.

He submits that this Court adopted views in several times that when death is occurred in a road traffic accident in the year 2015 and thereafter the notional income would be Rs. 5,000/-

Mr. Ray, learned advocate appears on behalf of the claimants submits that the claim application stated the income of the deceased to be Rs. 8,000/- per month as a mason under a registered contractor. The name of the registered contractor i.e. the employer is also mentioned in the claim application. At the time of evidence the widow appears as P.W. 1 and deposed before the learned Tribunal that her husband was a mason and employed under the contractor namely Ajit Dolai, the learned Tribunal has considered the evidence of P.Ws and is of opinion that the evidence of P.W. 1 cannot be denied regarding the avocation and income of the deceased.

Mr. Ray submits that the observation of the learned Tribunal is not erroneous. There is no specific contrary evidence on behalf of the Insurance Company to dispute the evidence of P.W. 1.

He further argued that according to the notification of Govt. of West Bengal for Minimum Wages Act for the month of January, 2016 the minimum wages for a mason (skilled labour) for zone B is Rs. 7,296/-

Learned Tribunal though have not considered the specific notification of the Government of West Bengal but the observation of income of a mason on that relevant period is not at all illegal.

He further argued that the learned Tribunal has correctly observed that Insurance Company did not controvert the testimony of P.W. 1 except mere denial.

Finally Mr. Ray submits that the income of the deceased may be calculated according to the notification of the Minimum Wages Act for the relevant period.

Heard the learned advocates. Perused the observation of the learned Tribunal.

It appears that during evidence of PW. 1 (widow) she stated that her husband was a mason and was employed under the registered contractor namely Ajit Dolai. Though during her examination-in-chief, he stated that one certificate of income was produced, but no such certificate of income was placed before the learned Tribunal to prove the income of the deceased. However, it appears that the learned Tribunal is of opinion that the evidence of P.W. 1 as well as specific averment in the claim application may be considered to be true as avocation and income of the deceased.

In considering the entire materials and pleadings of the parties it is my clear observation that the plaintiff/petitioner has to plead regarding a particular point and such point has to be proved by adducing proper evidences. In this case the claimant has pleaded that the deceased used to earn Rs. 8,000/- per month under a specific registered contractor. During the evidence of P.W. 1 has deposed according to the pleadings. Such pleadings of the claimant was denied specifically in the written statement by the insurance company and during the cross examination the oral evidence was also denied by putting specific question. However, it is true that the Insurance Company has not asked anything regarding the avocation of the deceased but the income of the deceased has been specifically challenged. It is trite law that, the fact and case is required to be proved on the principle of preponderance of probabilities, but such principle cannot fade the adverse presumption of the court under Section 114(9) of Evidence Act for non production of a particular document which has been specifically pleaded.

Considering the entire facts I am of the view that the learned Tribunal has proceeded in irregular way to consider and appreciate the evidences on record. Only by placing reliance upon the pleadings and examination-in-chief of P.W. 1 is not sufficient to prove the specific income of a deceased.

On the above score I am of the view that though the avocation of the deceased was not challenged by the Insurance company but the income was specifically challenged in this case which was not specifically proved.

It is the submission of Mr. Ray that the learned Tribunal has correctly assessed the income of the deceased which is nearly at par with the notification of Minimum Wages Act for the relevant period i.e. on 1st January, 2016.

It appears to me that the said notification was not considered by the learned Tribunal. It further appears to me that such notification was not placed or considered by the learned Tribunal and squarely it was not placed to challenge by the Insurance company.

Now by placing reliance upon the notification to assess the income of a person shall deprive the insurance company to plead against it.

Thus, I find no justification to place reliance upon a notification which is not at all placed during the trial.

Considering the same I think it necessary to hold that in this case as the deceased was a mason so, income of the deceased should be calculated to be Rs. 5,500/- per month. On that score the income of the deceased calculated by the learned Tribunal is requires modification.

In considering the deduction towards personal expenditure the learned Tribunal has deducted 1/4th considering the number of claimants. In this case the widow, minor son and the parents of the claimants filed this claim application. So, the number of claimants are 4.

Among the four claimants the legal heirs of the deceased are three i.e. widow, minor son and the mother. The father is not the legal heir of the deceased and there is no specific evidence regarding the avocation and income of father and how the father is dependent upon income of the deceased. Thus, in this case considering the number of the dependents 3, the deduction towards personal expenditure should be $1/3^{rd}$ instead of $1/4^{th}$.

It appears that the learned Tribunal has awarded general damages of 70,000/- along with additional 20% according to the observation of the Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Pranay Sethi So, the general damages was awarded Rs. 84,000/-

However it further appears that the learned Tribunal has further awarded specifically Rs. 50,000/- towards the petitioner No. 1 as spousal consortium another Rs. 60,000/ towards the petitioner No. 2 as parental consortium and Rs. 50,000/- each in favour of petitioner No. 3 and 4 towards the filial consortium. The observation of the learned Tribunal regarding fixing filial, spousal, parental consortium appears to me not according to the law laid down in **National Insurance Co. Ltd. vs. Pranay Sethi.** Considering the same, it appears to me that the award passed by the learned Tribunal towards parental consortium spousal consortium and filial consortium is not justified.

It appears that the learned Tribunal has not awarded any interest on and upon compensation. This Court has on several occasions adopted the interest portion to be 6% per annum from the date of filing of the claim application, the same view can be adopted. In this case the claimants are entitled to get the compensation together with 6% interest per annum from the date of filing of the claim application till its realisation.

Considering all aspects award passed by the learned Tribunal requires modification.

Jut and proper compensation is assessed as hereunder : -

<u>Calculation of compensation</u>

1.	Monthly Income :	Rs. 5,500/-
2.	Annual Income :	Rs. 66,000/-
3.	Less 1/3rd personal expenses Rs. 22,000/-	Rs. 44,000/-
4.	Add: 40% general damages	Rs. 17,600/-
		Rs. 51,600/-
5.	Multiplier	X 18
		Rs.9,28,800/-
6.	Add General damages	Rs. 84,000/-
		Rs. 10,12,800/-
		(+ 6% from filing .)

After calculation the award comes to Rs. 10,12,800/-. The award shall carry 6% per annum from the date of filing of the claim application till its actual realisation.

It appears that insurance company has deposited an amount of Rs. 25,000/- towards statutory deposit from 13.02.2023 thereafter they have deposited further amount of Rs. 29,09,315/,- so the Insurance company has deposited in total amount of Rs. 29,34,315/- The same amount must have accrued some interests.

The office of the Ld. Registrar General, High Court at Calcutta is directed to calculate the award passed by this Court and disburse the same in favour of the claimant Nos. 1, 2 and 3 equally within four weeks.

The office of the ld. Registrar General, High Court at Calcutta shall disburse the cheque in the name of respondent No. 1 as “Sefali Dolai”. The office of the learned Registrar General, High Court at Calcutta shall also allow the said respondent No. 1 to receive the cheque respondent No. 2 as his natural guardian mother and respondent No. 1 is directed to deposit the cheque in a Nationalised Bank or Post Office in a Fixed Deposit scheme so, that the amount may be utilised by the minor after attaining his majority.

After such disbursement there may have some residue that may be refunded to the Insurance Company on usual prayer.

The payment of compensation is subject to ascertainment of payment of deficit Court fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receipt the deficit court fees, if any.

FMA 575 of 2024 is disposed of.

Pending applications, 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.)