06.05.2024
Ct. 25
Sl. 7.
s.g.

IN THE HIGH COURT AT CALUTTA

Civil Appellate Jurisdiction

F.M.A. 287 of 2024
With
COT/83/2024

HDFC Ergo General Insurance Co. Ltd.
Vs.
Tumpa Singh & Anr.

Mr. Soumalya Ganguli,
..........for the appellant/claimant.

Mr. Amit Ranjan Roy,

......for the Respondent.

Affidavit of service filed on behalf of the appellant is taken on record.

The instant appeal has been preferred against the judgment and award dated 10th October, 2023, passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 7th Court, Paschim Medinipur, in MAC Case no. 600 of 2016.

The Insurance Company has preferred the instant appeal against the award. The respondent/ claimants have also preferred a Cross appeal being no. COT 83 of 2024 against the said award. The COT is not listed today. Considering the submission of parties and on consent, the instant appeal along with COT is taken up for hearing for uniformity of the judgement. The COT be listed today by supplementary list.

The brief fact of the case is that, the victim of this case namely one Buddhyeswar Singh on 16.7.2016 was walking along left side of moram portion of NH 16 near on Annapurna Hotel at Makrampur Bazar, under P.S. Narayangarh, District Paschim Medinipur. At that time the offending vehicle (Hyundai I.10 Car) coming from Kharagpur side towards Belada at an excessive high speed in a rash and negligent manner, dashed the deceased. By such he sustained severe injuries and shifted to Medinipur Medical College and Hospital thereafter he referred to Kolkata Medical College and Hospital wherein he succumbed to his injuries.

The present claimants being the widow, minor son, and the parents of the deceased preferred an application under Section 166 of M.V. Act before the learned Tribunal for getting compensation. The claim case was contested by the Insurance Company by filing written statement. Insurance Company has also obtained leave under Section 170 of the M.V. Act.

After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs. 21,00,700/- together with 6% interest per annum towards the compensation and directed the Insurance Company to the pay the compensation.

Being aggrieved by and dissatisfied with the said award the Insurance Company have preferred the instant appeal. Let the appeal and the cross-appeal be taken up together for uniformity of the judgement.

After hearing the parties it appears that only point raised and challenged before the Appellate Court is quantum of compensation which was based on the income of the deceased.

It appears that the learned Tribunal has awarded the compensation fixing the income of the deceased of Rs. 10,000/- per month. Learned Advocate for the Insurance Company submits that the learned Tribunal has erroneously assessed the monthly income of the deceased in this case notional income may be fixed which should not more than Rs. 6,000/- per month. On the other hand, the learned Advocate Mr. Roy appearing on behalf of the claimant submits that the claim application was filed stating the income of the deceased to be RS. 15,000/- per month from the business of stationary shop. The P.W ,1 that is the widow, has deposed before the learned Tribunal that her husband used to earn Rs. 15,000/- per month and she proved the avocation by producing necessary documents of trade licence etc. PW 3 also appeared and proved the trade licence before the learned Tribunal. Mr. Roy further submits that the learned Tribunal should have considered the income of the deceased to be Rs. 15,000/- per month.

Heard the learned Advocates and perused the materials-on-record. It appears that claim application was preferred stating the avocation of the deceased as business man (stationary shop), the monthly income was stated to be Rs. 15,000/-. To prove the avocation one worker of concerned gram panchayet appeared before the learned Tribunal as PW -3, who proved the trade certificate issued by the Panchayet in favour of the deceased prior to the accident. In assessing the compensation the learned Tribunal has considered the issue and is of opinion that the income of the deceased from the said business is depending upon certain factors which were not proved by the claimants. So, he fixed the income of the deceased to be Rs. 10,000/- p.m. on a guess work.

Mr. Roy cited a decision of **National Insurance Company Vs. Sujata Manna** and referred the ratio. The Hon'ble Division Bench in Sujata Mann has opined that the oral evidence of widow regarding the income of the victim cannot be disbelieved. In the case of **Sujata manna** (supra) the deceased was a barber and the widow of the deceased deposed before the Learned Tribunal stating that her husband income was Rs. 6,000/- per month. The said version of PW-1 was accepted by the learned Tribunal which was under challenged. The Hon'ble Division Bench is also of view that the income of a barber Rs. 6,000/- per month that is, Rs. 200/- per day is not at all improbable.

The fact of this case shows that learned Tribunal has accepted the income of the deceased to be Rs.10,00 p.m. Let me consider whether the observation of the learned Tribunal is at all reasonable. Learned Advocate of the Insurance Company submits that the notional income has to be adopted in this case, as the claimants have failed to prove the monthly income of the deceased. The argument on behalf of the Insurance Company is not appear to be justified as in this case the avocation of the deceased has been sufficiently proved that the deceased had a stationary shop and he was running the stationary shop by having a proper trade licence. When the avocation of a person has been proved before the learned Tribunal the Tribunal has to make a guess work regarding the income of the deceased considering the other attending factor of each case. In this case the principal of notional income cannot be applicable. The learned Tribunal has not considered the income of the deceased as Rs. 15,000/-p.m. as the certain factors which required to be proved for the purpose of business of the stationary shop has not been satisfied; it further appears that the claimant has only produced the oral evidence of PW-1 regarding income of the deceased. The learned Tribunal has adopted the guess work. I find no justification to interefere with the guess work of the learned Tribunal; he had the opportunity to see the claimants and assess the value of the evidence better than this Appellate Court. Though there is oral evidence but the overall finding of Learned Tribunal is correct. The learned Tribunal has reasonably accepted the income of the deceased of Rs. 10,000/-. In find no merit to interfere or enhance the income of the deceased.

Considering the same, award passed by the learned Tribunal appears to be sustainable. It appears that learned Tribunal has already awarded sum of Rs. 21 lakh 7 thousand (Rs. 21,00,700/-). The said award shall carry 6% interest per annum from the date of filing of the claim application till its actual reliasation.

It appears that the Insurance Company has already deposited the sum of Rs. 25 thousand on

8.1.2024 and thereafter deposited a sum of Rs. 29 lakh 77 thousand 6 hundred 80 only. Totalling of which comes to Rs. 30 lakhs 2 thousand 6 hundred 80 (Rs. 30,02,680/-) only. The deposited amount must have accrued some interest.

The Office of the learned Registrar General, High Court, Calcutta is directed to disburse the same together with accured interest in favour of the claimants no.1, 2 and 3 equally within 4 weeks from the date of passing this order according to the regular norms of identification and certification.

Under the above observation FMA 287 of 2024 along with cross- appeal COT 83 of 2024 is disposed of; all connected applications, if pending, are also disposed of.

Interim order, if any, stands 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.)**