IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

07.05.2024
SL No.217
Court No.25
Ali

F.M.A. 1405 of 2018
With
IA No.: CAN/1/2017 (Old No.:CAN/7354/2017)
With
CAN/2/2021

Smt. Krishna Bera & Ors.
Vs.
The United India Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy
...........for the appellants/claimants.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
......for the respondent Nos. 1 & 2.

In re.: CAN 2 of 2021

This is an application for substitution; filed on behalf of the appellants/claimants. It appears that the appellant No. 4 i.e. the mother of the deceased expired on 02.01.2021 i.e. during the pendency of the instant appeal living behind the legal heirs mentioned as appellant Nos. 4a to 4d at page three (3) of the said application.

Having heard the learned advocates for the parties and considering the copy of death certificate, the application being CAN 2 of 2021 is considered and allowed.

Department is directed to make necessary notes in the Cause Title of the Memo of the Appeal regarding the death of appellant No. 4 and substituting the name of the heirs as mentioned in page three (3) of the said application.

FMA 1405 of 2018

The instant appeal has been preferred against the judgment and award dated 20^{th} March, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, FTC-1, Tamluk, Purba Medinipur, in MAC Case no. 20 of 2012/299 of 2010.

The claimants have preferred the instant appeal against the award.

The brief fact of the case is that the victim of this case, namely, one Chittaranjan Bera boarded on a truck loaded with fishes bearing registration No. WB-29/9634 and started journey from Digha-mohana to Howrah Market on 16.08.2010 at about 2.15 A.M. The said truck was running in a high speed and reached in front of Bharat Petrol Pump under P.S. Uluberia at the time the driver loss control over the vehicle and dashed at the back side of the stationary truck bearing registration No. AP-21W/7989 with a great force. As a result, the victim sustained severe injury and admitted to the S.D. Hospital, Uluberia, thereafter shifted to Medical College and Hospital, Kolkata but he succumbed to his injuries on the same day.

The widow, two sons and mother of the deceased filed an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation on the ground that the accident solely happened due to the rash and negligent driving of the driver of the offending vehicle i.e. the truck bearing No. WB-29/9634 (truck).

The insurer of the truck loaded with fishes and the insurer of the stationary truck both contested the case by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.4,57,000/- towards the compensation and directed the insurer of the truck loaded with fishes to pay the compensation.

Being aggrieved by and dissatisfied with the said award the claimants have preferred the instant appeal for enhancement of the award.

The respondent No. 1 i.e. the United India Insurance Company Ltd. has satisfied the award through the office of the learned tribunal.

Mr. Roy, learned advocate appearing on behalf of the claimants submits that the sole question raised in this appeal is the income of the deceased. He submits that the learned tribunal has adopted the income of the deceased notionally to be Rs. 3,000/- per month. He further submits that the claim application was filed stating, inter alia, that the deceased was in service with "S.B. Fish Merchant and Commission Agent" and he used to earn Rs. 7,500/- per month as salary and also Rs. 2,000/- per month for fooding and line expenses. He submits that the salary certificate was produced by the PW-1. Thereafter, the employer of the deceased also appeared before the learned tribunal as PW-3. He argued that, from the evidence of PW-1 and PW-3 it would be revealed that the monthly income of the deceased was (Rs. 7,500/- + Rs.2,000/)- per month. He argued that the learned tribunal by ignoring the evidences has fixed the compensation by fixing the monthly income of the deceased notionally Rs. 3,000/-. He submits that the observation of the learned tribunal is erroneous. So, he prayed for just and proper compensation. He further argued that the learned tribunal has failed to award the future prospects and the general damages in favour of the claimants by virtue of the decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi.***

Mr. Paul learned advocate appearing on behalf of the Insurance Company submits that the learned tribunal has committed no error. He specifically argued that the salary certificate which was produced by the PW-1 before the learned tribunal was not placed or never tendered to the PW-3. He again pointed out the cross examination of the PW-3 wherein the employer of the deceased has specifically admitted that he has no document to show that the deceased was employed under him for looking after fish trading. Mr. Paul further argued that as the document was not tendered so the learned tribunal has correctly assessed the notional income of the deceased. He further argued that after positive assertion of PW-3. The salary certificate and its evidentiary value cannot be taken into considering by this appellate Court.

Heard the learned advocates perused the evidences of PWs-1 and 3. It is true that the Division Bench of this Court in ***National Insurance Co. Ltd. Vs. Sujata Manna & Ors.*** has held that the value of oral evidence cannot be ignored. Let me see what are the facts of the case regarding the income of the deceased. The claim application stated that deceased was employed with "S.B. Fish Merchant and Commission Agent" the claim application also stated that the deceased used to earn (Rs. 7,500/- + Rs. 2,000/-) per month.

It appears from the LCR that the salary certificate appearing to be signed by PW-3 was produced by PW-1 and it was marked "X" for identification. Surprisingly, when PW-3 appeared before the tribunal, the said document was not tendered. The value of oral evidence and its effect in the case under Section 166 of M.V. Act is well reasoned and believable if the facts and circumstances of the case is justified. In this case, it is very much surprising that why the document which was marked "X" for identification purported to be signed by the PW-3 was not tendered to PW-3.

Mr. Roy learned advocate submits that it is due to the ignorance of the learned advocate conducting the cases before the learned tribunal who could not tender the document to the PW-3; but it further appears from cross examination PW-3 that he specifically stated that he issued no document regarding the employment of deceased Chittaranjan Bera with his fish trading business. So, it appears that the statement appearing in the examination-in-chief in PW-1 as well as the cross examination of PW-3 are self-contradictory. It further appears that if the document was tendered to P.W.-3, the Insurance Company may have the opportunity to cross examine the same. However, considering the entire aspects I find no justification to place reliance upon the document i.e. the salary certificate which was marked for "X" for identification.

In considering the entire circumstances it can be safely hold that the avocation of the deceased has been sufficiently proved, it was also proved that the deceased was engaged as an employee in the fish trading business under name and style "S.B. Fish Merchant and Commission Agent" the deceased may be labour or may be employer of the said business.

Considering the entire aspects, it appears to me that the learned tribunal must have assessed the income of the deceased under a guess work but the fixing notional monthly income of the deceased appears to be not justified as there is specific evidence of the avocation of the deceased.

Considering the entire circumstances, I think it necessary to hold that the income of the deceased regarding his engagement with the "S.B. Fish Merchant and Commission Agent" would be at least Rs. 4,000/- per month.

However, it appears to me that the learned tribunal has adopted the multiplier to be 16, though he has considered the age of the deceased 37 years. According to the observation of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** the correct multiplier would be 15.

At the time of filing of the claim application the number of claimants are four (4) so the deduction towards the personal expenses should be 1/4th. It further appears that the learned tribunal has failed to adopt the view of the Hon'ble Apex Court passed in ***Pranay Sethi (supra)*** regarding awarding the future prospects and the general damages. In this case, the claimants are entitled to get the future prospects which would be 40% to the establish income of the deceased and the general damages of Rs. 70,000/-

Considering the all aspects, the award passed by the learned tribunal requires modification:

Calculation of compensation

1. Monthly Income	:Rs.4,000/-
2. Annual Income (Rs. 4,000/- X 12)	:Rs.48,000/-
3. Less: Deduction 1/4th	:Rs.12,000/-
	:Rs.36,000/-
4. Add: 40% Future Prospects	:Rs.14,400/-
	:Rs.50,400/-
5. Multiplier 15 (Rs.50,400/- X 15)	:Rs.7,56,000/-
6. Add: General Damages	:Rs.70,000/-
	:Rs.8,26,000/-
7. Less: Award already received	:Rs.4,57,000/-
	:Rs.3,69,000/-

After calculation the award comes to Rs. 8,26,000/-. The claimant has already received a sum of Rs. 4,57,500/- so the balance award comes to Rs.3,69,000/-.The balance award shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 21st September, 2010 till actual payment. The United India Insurance Company is further directed to comply the award through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same amount in favour of appellants No. 1, 2 and 3 equally according to the general norms of certification and identification subject to the 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 receive the deficit Court Fees, if any.

The application being **FMA 1405 of 2018** 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.)