IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 510 of 2012

Chaina Pal & Ors.
versus
IFFCO Tokio General Insurance Co. Ltd. & Anr.

For the Appellants/Claimants : Mr. Amit Ranjan Roy, Advocate.

For the Respondent : Mr. Rajesh Singh

Hearing on : 24.01.2024

Judgment on : 25.01.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and order dated 30th August, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, (RD) Court, Paschim Medinipur in MAC Case No. 255/2009.

2. The present appellants being the claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation.

3. The claim case was contested by the Insurance company. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.3,21,500/- and directed the Insurance Company to pay the compensation. Being aggrieved by

and dissatisfied with the said award, the present appeal has been preferred by the claimants for enhancement of the award.

4. Learned advocate for the appellants submits that the only ground for enhancement is that the learned tribunal has failed to appreciate the fact of income of the deceased in this case. The claim application was filed stating the income of the deceased to be Rs.30,000/- per month. But, the learned tribunal has awarded compensation by fixing the income of the deceased to be Rs.3,000/- per month, which is completely erroneous.

5. Learned advocate for the Insurance Company submits that there is no cogent evidence before the learned tribunal to substantiate the plea of the claimants regarding the income of the deceased. No document was proved in support of income of the deceased, so the learned tribunal has correctly assessed of the income of the deceased.

6. Heard the learned advocate perused the materials on record. It appears that the occupation of the deceased was mentioned in the claim application to be business, contractor of civil construction, transport and paddy purchase and sale. The income of the deceased was stated to be Rs.30,000/- per month. To prove the income the PW-1 i.e. widow of the deceased deposed that her husband used to earn Rs.30,000/- per month and was a contractor and owner of the lorry bearing No. WB-41/6053. One private auditor (PW-3) was appeared before the learned tribunal and submits that he is a chartered accountant and he made audit

regarding the income of the deceased for the period of year 2007-2008 and 2008-2009. He also produces the auditor's report signed by him. The auditor's report reflected that the deceased used to earn Rs. 1,41,672/- for the year 2007-2008 and Rs.1,47,956/- for the year 2008-2009. During cross examination by the Insurance company, the auditor (PW-3) deposed that one Income Tax advocate had handed over the documents to him for conducting the audit; he do not have had any personal knowledge regarding the income of the deceased. During the course of trial the certificate of registration of a truck bearing No. WB-41/6053 was produced wherefrom it reveals that the said truck was transferred in the name of the deceased on 21.09.2009. Thereafter, CF was renewed time and again by the deceased with the concerned department.

7. Considering the entire facts, the learned tribunal is of view that the claimants could not prove the income of the deceased so he assessed the income of the deceased notionally i.e. Rs.3,000/- per month. In considering the entire materials it appears to me that the auditor's report may not have such a value to place reliance, but at the same time, it appears that the deceased had a business of truck. The income of the deceased towards the business of the truck cannot be denied; so considering the transport business of the deceased, his income cannot be calculated notionally Rs.3,000/- per month. In that score, it appears to me that the income of the deceased should not be less than Rs.5,000/-per

month through his transport business. On that score, the award passed by the learned tribunal need be modified.

8. This is an application under Section 166 of the M.V. Act, according to the observation of Hon'ble Supreme Court passed in ***Pranay Sethi*** the claimants are entitled to get the future prospects and general damages.

9. The just and proper compensation of this case is calculated as hereunder:

Calculation of Compensation

i)	Income	:Rs.5,000/-
ii)	Annual Income (Rs.5,000 X 12)	:Rs.60,000/-
iii)	Add: 25% future prospects	:Rs. 15,000/-
		:Rs.75,000/-
iv)	Less: 1/3rd deduction towards personal Exp.	:Rs. 25,000/-
		:Rs.50,000/-
v)	Multiplier 13 (Rs.50,000 X 13)	:Rs.6,50,000/-
vi)	Add General Damages	:Rs.70,000/-
		:Rs.7,20,000/-
vii)	Less: Already awarded	:Rs.3,21,500/-
	Balance Award	**:Rs.3,98,500/-**

10. After calculation the just and proper compensation comes to Rs.7,20,000/-. The learned tribunal has already awarded a sum of Rs. 3,21,500/- so the balance award comes to Rs.3,98,500/- the award shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 16.07.2009 within six weeks

through the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same amount in the name of the appellant Nos. 1, 2 and 3 vide three equal account payee cheques on usual terms and conditions.

11. The office is directed to return the LCR immediately.

12. The learned tribunal shall act upon the certified copy of this order to receive the deficit Court Fees.

13. The instant **FMA 510 of 2012** is disposed of with the above observation.

14. All connected applications, if any, stand disposed of.

15. Interim orders, if any, stand vacated.

16. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)