10.05.2024.
PB
Sl. No.57.
Ct. No.238

FMA 962 of 2018
with
CAN 1 of 2018
with
CAN 4422 of 2018

Anowara Begam & Ors.
Vs
United India Insurance Company Ltd. & Anr.

Mr. Saidur Rahaman.
... For the appellants.

Mr. Parimal Kr. Pahari.
.....For the respondent no.1.

The instant appeal is preferred against the judgment and award dated 28th August, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Jalpaiguri in MAC Case No.157 of 2015.

The brief fact of the case is that the victim of this case, namely, one Musha Ali on 22nd February, 2015 at about 8 a.m. was proceeding from Bhutki Bazar towards Siliguri by his motor cycle bearing No.WB 74 AB0714 through the Jalpaiguri Siliguri Road, when he reached the bazar area an offending loaded vehicle bearing No.PB 23F 4265 (Truck) which was coming with an excessive high speed from the said direction dashed the victim from behind; by such sudden accident the victim fell down the road with his motor cycle and the wheel of the offending vehicle (Truck) crashed the motor cycle along with the victim. Thereafter, the victim was shifted to the North Bengal Medical College wherein the doctor declared him dead.

The widow, minor daughter and the parents of the deceased preferred an application under Section 166 of the M.V. Act before the learned Tribunal for getting compensation. The case was contested by insurance company by filing written statement. The learned Tribunal after receiving the evidences has awarded a sum of Rs.4,60,000/- towards compensation of this case and directed the insurance company to pay the compensation.

The insurance company has satisfied the award through the office of the learned Tribunal Court.

Being aggrieved by and dissatisfied with the said award, the claimants have preferred the instant appeal.

Mr. Rahaman, learned advocate appearing on behalf of the claimant submits that the award passed by the learned Tribunal is under challenge before the appellate court on the basis of the sole ground of income of the deceased. He submits that the claim application was filed stating the income of the deceased to be proprietor of a shop under the name and style as “786 Telecom”. He further submits the deceased had a business of selling mobile and mobile cash cards of all companies and also he used to do xerox and lamination by his own machines at the business premises. The deceased was performing the business after obtaining necessary trade licence from the concerned authority. He further argued that the trade licence as well as the other documents relating to the business has been properly proved before the learned Tribunal Court. He further argued that the deceased was filed the income tax return showing the profit and loss of his business. He submits that the person of income tax department appeared before the learned Tribunal as P.W.3 and submitted the certificate copy of the income tax return of the deceased for the assessment years 2013-14 and 2014-15. He further argued that learned Tribunal has disregarded to the income of the deceased appearing in the income tax return and only assessed the compensation by fixing the notional income of the deceased of Rs.3,000/- per month. He submits that the income tax return is a statutory document, learned Tribunal should have considered the income of the deceased appearing in the income tax return. He further argued that the learned Tribunal disbelieved the ITR on the ground that the income tax return for assessment year 2014-15 of the deceased was filed on 20th April, 2015 after the accident. He further argued that to assess the just and proper compensation of this case, the income of the deceased should be calculated from the ITR for the assessment year 2013-14.

Mr. Pahari, learned advocate appearing for the insurance company submits that the learned Tribunal has not committed no error in this case. He further submits that the learned Tribunal on the basis of the observation of the Hon'ble Apex Court in (V. Suva Lakshmi (2008) ACJ 936) has correctly assessed that the income tax return filed after the death of the deceased cannot be considered. He also submits as the deceased died in the year 2015, so, the notional income of the deceased can be considered to Rs.5,000/- per month.

Heard the learned advocates and perused the paper book along with the evidences therein. It appears that the income of the deceased is the sole consideration before this appellate court. Learned tribunal has adopted the notional income of the deceased Rs.3,000/- p.m.

It appears that at the time of filing of the claim application, the avocation of the deceased was stated to be the proprietor of a shop wherein the deceased used to sell mobile, mobile cash card of all companies and also used to do xerox and lamination by his machines. The business of the deceased has been proved before the learned tribunal by adducing sufficient documents and evidences regarding trade licence and the certificate of dealer of Reliance Mobile Seam Card. Furthermore, the claimant also produced the PW-3, who is one of the employee of income tax department concerned and duly authorised by the Income Tax Officer to depose before the tribunal. During his evidence, PW-3 produced the certified copy of income tax return for the assessment years 2013-14 and 2014-15. The certified copy of those return was marked exhibit. It appears that the income tax return for the assessment year 2013-14 was filed on 30th July, 2014 and ITR for assessment year 2014-15 was filed on 20th April, 2015. The alleged accident happened on 22nd February, 2015. So, it appears that the income tax return for assessment year 2013-14 was filed prior to the accident. But the ITR of assessment year 2014-15 was filed after the accident. According to the observation of the Hon'ble Apex Court in (United India Company Limited Vs. Malarvizhi), the income tax return is a statutory document and the income appearing in the income tax department of deceased can be considered to be the just and proper of the income of the deceased in assessing the compensation under Section 166 of the Code.

In perusing the observation of the tribunal, it appears that the learned tribunal has considered the ITR filed by the victim for the assessment year 2014-15, but, has not considered the ITR for the assessment year 2013-14. Considering the same, I am of the view that the avocation of the deceased has been successfully proved by the claimants regarding the business of the deceased. The income of the deceased can be very well accepted through the ITR submitted by the PW-3 for the assessment year 2013-14. It appears from the ITR for the assessment year 2013-14 that the annual income of the deceased was Rs.2,23,320/-. The learned tribunal must have calculated the compensation on the basis of the ITR for the assessment year 2013-14.

It appears from the materials on record that the deceased was 27 years old at the time of accident, so, the applicable multiplier would be 17 according to the observation of the Hon'ble Supreme Court in (National Insurance Company Limited Vs Pranay Sethi). The claimant are also entitle to get the future prospect which would be 40% of the established income of the deceased and the claimants are also entitled to get the general damages of Rs.70,000/-. In this case, deduction towards the personal expenses would be one third, considering the fact that the widow, minor daughter and the mother are the dependents of the deceased in this case.

After considering the above, it appears to me that the award passed by the learned tribunal requires modification.

The just and proper compensation of the case is assessed as follows:-

After calculation, the award comes to Rs.36,05,405/-. It appears that the claimant has already received a sum of Rs.4,60,000/-. After deduction of the already received compensation, the balance comes to Rs.31,45,405/-.

The insurance company is directed to pay the balance compensation along with 6% interest per annum from the date of filing the claimed application till its actual payment. The 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 amount in favour of the widow, minor daughter and mother of the deceased equally. The widow of the deceased shall receive the cheque of the award on behalf of her minor daughter as a natural guardian mother and shall deposit the same in the post office or a nationalized bank in a fixed deposit scheme in the name of the minor daughter so that the amount can be utilized by the minor after attaining her majority.

The instant appeal along with the connected applications, if any, are all disposed of.

(Subhendu Samanta, J.)