IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

20.03.2024
SL No.17 & 18
Court No. 551
Ali

F.M.A. 174 of 2024
With
IA No.: CAN/1/2023

National Insurance Co. Ltd.
Versus
Smt. Kripalini Das & Ors.
With
COT 5 of 2024
Smt. Kripalini Das & Ors.
Versus
National Insurance Co. Ltd. & Ors.

Mr. Afroze Alam
....for the appellant-insurance Co.

Mr. Ashique Mondal
...for the respondent Nos. 1-3.

In Re.:CAN 1 of 2023

In pursuance to the order of this Court dated 18th January, 2024, the Insurance Company is directed to deposit the entire awarded sum together with @ 6% interest per annum less the statutory deposit within 23rd February, 2024.

Mr. Afroze Alam, learned advocate appearing on behalf of the Insurance Company submits that the deposit has not been made in due time due to some unavoidable circumstances and miscommunication between the learned advocate and his client. So, he seeks necessary time to deposit the same.

Mr. Mondal, learned advocate appearing on behalf of the respondent/Cross Objector submits that the instant appeal can be disposed of without any specific direction of deposit the entire awarded sum.

Considering the submissions of the parties, the instant appeal is taken up for hearing.

FMA 174 of 2024

The instant appeal has been preferred against the judgment and award dated 21st March, 2023, passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Contai, in MAC Case No. 189 of 2014.

The brief facts of the case is that on 21.01.2009 the victim, namely, Somdutta Das was on the motor cycle as a pillion rider and was returning home towards Ramagar from Kanthi along Digha Contai Road. At about 03.30 P.M. when he reached near Alampur Fishery Office then one lorry bearing No. WB-29/5441 which was coming from west to east side in a rash and negligent manner and at that moment the driver of another mini lorry bearing No. WB-31/1652 was driving the same loaded with Ice berg and collided with each other. Thereafter, the mini lorry capsized over the victim and the victim sustained severe bodily injury and died on spot.

The widow, mother and the son of the deceased filed an application under Section 166 of M.V. Act before the learned Tribunal for getting compensation on the ground that the victim died due to the rash and negligent driving of the driver two offending vehicles.

The claim case was contested by the Insurance Company by filing written statement.

The National Insurance Company Ltd. being the insurer of both the vehicles contested the case jointly on behalf of the opposite party Nos. 3 and 4.

After hearing the parties and after receiving the evidences the learned Tribunal has awarded a sum of Rs. 13,26,200/- together with interest @ 9% per annum as a compensation and directed the Insurance Company to pay the compensation.

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

The claimants also preferred a cross appeal being COT 5 of 2024 for enhancement of the award. Both the appeals and the cross appeal is taken up together for uniformity of the decision.

Learned advocates for the parties have argued that the instant appeal and the cross appeal has only been preferred on the ground of quantum of compensation.

Mr. Afroze Alam, learned advocate for the appellant submits that the income of the deceased was erroneously calculated by the learned Tribunal. The learned Tribunal has also awarded the compensation together with excessive rate of interest and excessive amount of consortium has been awarded.

Mr. Alam, learned advocate for the appellant submits that the claimant has failed to prove the income and avocation of the deceased. Though, it has been stated in the claim application that the deceased was self-employed businessman and had a monthly income of Rs. 11,000/- but no documentary evidence or any ITR was produced by the claimants to prove that the deceased had a business and he used to earn Rs. 11,000/- per month.

Mr. Alam further submits that the learned Tribunal has committed error by assessing the income of the deceased on the basis of the circular of Government of West Bengal Office of the Labour Commissioner for the year 2022. The income of the deceased was calculated to be Rs. 8,380/- on the basis of minimum wage of an unskilled labour in Information Technology other then the Municipal areas falling under Zone B in West Bengal.

Mr. Alam further argued that the learned Tribunal has got no evidence either oral or documentary to show that the deceased was an unskilled labour in Information Technology. Moreover, the circular was issued in the year 2022 and the alleged accident was happened in the year

2009. Thus, the income fixed by the learned Tribunal on the basis of the circular of 2022 is not proper.

Mr. Mondal, learned advocate appearing on behalf of the respondents submits that it is true that the particular monthly income of the deceased was not proved by the claimants but the claimant has produced several documents to show that the deceased had a running business. He submits that the exhibit-7 was produced and proved to show that the deceased had a business of “Ma Computer Offset” the trade licence was issued by TALGACHARY No.-1 Gram Panchayat.

Mr. Mondal further submits that the necessary document for the training of the deceased from Midnapur Youth Computer Centre has also been exhibited before the learned Tribunal. More so, the business papers i.e. the Register Books and several challan including monthly attendance Register of “Ma Computer Offset” was proved before the learned Tribunal.

Mr. Mondal further submits that the deceased had a loan at United Bank of India under the name of “Ma Computer Offset” the said loan had monthly installment of Rs. 7,220/-; the said loan could not be repaid. Thus, it became NPA. However, the said outstanding was settled after the demise of the deceased on 19th of October, 2016 by a scheme of one time settlement with the bank.

By citing those evidences Mr. Mondal submits that the Bank Officer has appeared before the learned Tribunal as PW-3 and proved the no due certificate issued by the Union Bank of India. He further submits that the entire documents goes to show that the deceased had a business of Computer Offset and he had a capacity to provide the equated monthly installment (EMI) more than @ Rs. 7,000/-. He submits that considering the entire documents it cannot be said that the deceased had income less than Rs. 8,000/-. He further submits that though the learned Tribunal has not adopted the proper view regarding the fixing the income of the deceased under the Circular of Government of West Bengal, Labour Commissioner Office for minimum wages of an unskilled labour but it has been sufficiently proved that the deceased had a business wherefrom he used to earn more than Rs. 8,000/-. He submits that the income adopted by the learned Tribunal is justified and cannot be altered.

Heard the learned advocates perused the materials on record also perused the evidences. It is true that the learned Tribunal as adopted the income of the deceased on the basis of the circular of 2022, so, on principle the income fixed by the learned Tribunal is not correct when the deceased died in the year 2009.

From the documents and the evidences on record it appears that the United Bank of India has sanctioned a loan of Rs. 4,31,000/- in favour of the deceased in the year 2005. The EMI was fixed at the time of accepting loan was Rs.7,220/-. So, it appears to me that the bank must have satisfied themselves to evaluate the assets and income of the deceased including the capabilities of the deceased to repay the loan through the EMI of Rs. 7,000/- plus per month.

Considering the aspects it appears to me that the deceased had an income from his business which shall not be less than Rs. 7,000/-per month in the year 2009. So, in this case, considering all aspects the income of the deceased from the said business should be Rs.7,000/- for the purpose of calculation of the just and proper compensation of this case.

It further appears that the learned Tribunal has awarded Rs. 1,20,000/- towards the loss of consortium in this case; according to the observation of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi,*** the loss of consortium would be Rs.40,000/-. It further appears that the interest portion was awarded on the higher amount @ 9% interest per annum. This

Court has regularly awarded the compensation together with simple interest @ 6% per annum. So, the same principle may be adopted in this case.

On that score, the observation of the learned Tribunal regarding the compensation need be modified.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Monthly Income :Rs. 7,000/-
2. Annual Income :Rs.84,000/-
   (Rs.7,000/- X 12)
3. Less: 1/3rd Personal Expenses :Rs.28,000/-
   :Rs.56,000/-
4. Add: Future Prospects 25% :Rs14,000/-
   :Rs.70,000/-
5. Multiplier 14 :Rs.9,80,000/-
   (Rs.70,000/- X 14)
6. Add: Non-pecuniary damages :Rs.77,000/-

Compensation :Rs. 10,57,000/-

After calculation the award comes to Rs. 10,57,011/-. The award shall carry interest @6% per annum from the date of filing of the claim application i.e. from 05.03.2009. The insurance company is directed to pay the compensation award together with interest through the office of the learned Registrar General, High Court Calcutta within six weeks. On such deposit the claimants are at liberty to receive the same from the office of the learned Registrar General, High Court Calcutta according to the regular norms of identification and verification 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 receive the deficit court fees, if any.

After such deposit the office of the learned Registrar General, High Court Calcutta shall allow the Insurance Company to have the statutory amount of Rs. 25,000/- alongwith accrued interest be refunded back on usual terms and conditions.

The instant **FMA 174 of 2024** along with **COT 5 of 2024** 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.)