

08.02.2024

Sl.No. 27
Ct.No. 551
Amalranjan

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

FMAT (MV) 41 of 2024

Kajimena Bibi and anr.

Vs.

The National Insurance Company Limited and anr.

Mr. Subir Banerjee

Mr. Sandip Bandyopadhyay

Ms. Ruxmini Basu Roy

Mr. Arghya Bhattacharya

.....for the appellants/claimants

Mr. Rajesh Singh

...for the respondent/insurance co.

The appeal is filed in time.

The appeal is formally admitted.

The appellants/claimants and the insurance company are represented by their learned counsel.

The appeal is otherwise ready for hearing.

Accordingly, the matter is taken up for hearing.

The instant appeal has been filed against the judgment and award dated 16.09.2023 passed by learned Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur in MAC Case No. 97/2018.

The brief fact of the case is that the present appellants being the claimants have filed an application before the learned tribunal under section 166 of the Motor Vehicles Act, 1988 (M.V. Act) for getting compensation on the ground that their predecessor died in a road traffic accident due to rash and negligent driving by the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim was contested by the insurance company by filing written statement.

The learned tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs. 10,19,000/- (Rupees ten lakhs nineteen thousand only) in favour of the claimants and directed the insurance company to pay compensation.

Being aggrieved by and dissatisfied with the said award the present appeal has been preferred by the claimants.

The claimants submit that the award passed by the learned tribunal is erroneous. Learned tribunal has assessed the income of the deceased to be Rs. 5,000/- per month. The deceased was a driver. The driving licence was

seized just after the accident from the possession of the deceased. Being a driver the deceased must have earned more than Rs. 5,000/- per month. The widow of the deceased deposed as PW1 and stated the income of her husband was Rs. 8,000/- per month. The learned tribunal has not considered the evidence of the PW1 and also not considered the seizure of the driving licence of the deceased and has erroneously passed the award fixing the income of the deceased to be Rs. 5,000/- per month. He argued that in case of driver this appellate court has adopted a view that a driver's income must not be less than Rs. 5,500/- per month.

He cited the observations of this court passed in FMAT (MV) 611 of 2022 with CAN 1/2023 in Sumiutra Tanti @ Sabita Tanti & ors. Vs. The Shriram General Insurance Company limited & anr. and another decision of this court passed in FMA 478 of 2021 in Smt. Kajal Ray @ Sheetal Ray & Ors. Vs. Chola Mondalam MS General Insurance Co. Ltd. & Anr., wherein this court assessed monthly income of a driver nearly to be Rs. 7,000/- per month. He further argued that the learned tribunal has not awarded the interest upon the

compensation amount. Thus, the claimants are entitled to get the interest portion on and upon the amount of compensation.

Mr. Rajesh Singh, learned advocate appearing on behalf of the insurance company raised objection and submits that in this case no documents of income has been produced before the learned tribunal. The employer of the deceased has not adduced as a witness.

Moreover, the learned advocate appearing on behalf of the claimants had asserted the learned tribunal that the compensation can be calculated fixing notional income of the deceased of Rs. 5,000/-. Learned tribunal on the basis of the submission of the learned advocate appearing on behalf of the claimants has assessed the compensation. He submitted his exception against the observation of this court in Sumitra Tanti @ Sabita Tanti & Ors and Smt. Kajal Ray @ Sheetal Ray & Ors. by submitting that the employer as well as the documents of income were produced before the learned tribunal in cases of Sumitra Tanti @ Sabita Tanti & Ors and Smt. Kajal Ray @ Sheetal Ray & Ors.

In this case, no such documents of income has been produced. The award passed by the learned tribunal is justified.

Heard the learned advocates and perused the certified copy of the award. It appears, the deceased died in a road traffic accident on 12.5.2018. The widow deposed before the learned tribunal as PW1. One eyewitness was also deposed as PW2. No other employer of the deceased appeared before the learned tribunal to prove the income and avocation of the deceased. Only arguments on behalf of the appellants before this court that the police has seized the driving licence of the deceased.

In the case of compensation under section 166 of the MV Act the claimants are at the duty to prove the income and avocation of the deceased. In case of Sumitra Tanti as well as Smt. Kajal Ray case this court observed that the claimant has produced evidence of income both oral and documentary, but in this case, there are no such documents to prove the income of the deceased. Moreover, the learned tribunal has passed the impugned award, according to the submission by the claimants through their learned advocate.

Submission of learned advocate on and upon instructions of the claimant cannot be challenged later on in this stage of appeal as it is always binding upon the claimant.

Now, the said undertaking by the learned advocate before the learned tribunal cannot be said to be bad in law at this juncture.

I find no justification to enhance the ground of income of this case. However, the claimants are entitled to get interest on and upon the compensation amount i.e., 6% per annum from the date of filing of the claim application.

It is the submission of the learned advocate for the appellants that the claimants have already been received the amount of compensation through the office of the learned tribunal.

The insurance company is directed to pay the interest portion as directed above on and upon compensation amount from the date of filing of the claim application till payment within six weeks through the office of the learned Registrar General, High Court, Calcutta.

On such deposit the claimants are at liberty to receive the same according to the direction of the learned tribunal.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent certified photocopy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Subhendu Samanta, J.)