IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

FMA 129 of 2016

Kajal Garai & Ors.
Vs.
New India Assurance Co. Ltd. Anr.

For the appellant	**:**	**Mr. Amit Ranjan Roy**
For the respondent	**:**	**Ms. Sucharita Pal**
Heard on	**:**	**24.1.2024**
Judgment on	**:**	**25-1-2024**

<u>Subhendu Samanta, J.</u>

1. The instant appeal has been preferred against the judgment and award dated September 21, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Asansol, in M.A.C. case No. 77 of 2009.

2. The present appellants have preferred an application before the learned Tribunal for getting compensation. The claim was contested by the Insurance Company by filing written statement.

3. After hearing the parties, the learned Tribunal has awarded a sum of Rs.12,89,500/- together with interest @ 6% per annum from the date of filing the claim case.

4. Being aggrieved by and dissatisfied with the impugned award, the present application has been preferred by the claimant for enhancement of the award.

5. Learned advocate for the appellants submits that there is a sole ground for enhancement of the award. The deceased was business man who used to earn Rs.15,000/- per month. During the trial, one person appeared before the learned Tribunal to prove the income tax return of the deceased. The income tax return shows that yearly income of the deceased is more than Rs.2,50,000/-. But the learned Tribunal has not considered the IT return in assessing the compensation. The learned Tribunal has assessed the income of the deceased as Rs.10,000/- per month. He submits that the observation of the learned Tribunal is erroneous, thus, the award need be modified.

6. Learned advocate appearing on behalf of the Insurance Company submits that the Tribunal has correctly assessed the compensation by fixing the monthly income of the deceased Rs.10,000/-. He submits that by virtue of the decision of the Hon'ble Supreme Court the claimants are only entitled to get the compensation on managerial cost which is required to engage one competent person to manage the business. It has been proved before the learned Tribunal that the business was carried on by the P.W. 1. So, there is no loss of income to the claimants. Thus, they are not entitled to get the compensation.

7. In support of his contention, learned advocate for the Insurance Company cited some decisions of Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. Yogesh Devi & Ors.** reported in (**2012) 3 SCC 613**, **Rani Gupta & Ors. United India Insurance Co. Ltd. & Ors.** reported in **(2009)13 SCC 498, State of Haryana & Anr. Vs. Jasbir Kaur & Ors.** reported in **(2003) 7 SCC 484.**

8. Refuting the contention of the learned advocate for the Insurance Company, learned advocate for the claimants has submitted some decisions to show that the income tax return submitted by the claimants can be considered to

be the income of the deceased as the income tax return is a statutory document. He also submitted that the deduction towards the PF shall not be deducted from the income of the deceased in considering the case of compensation under Section 166 of the M.V. Act. In support the his contention he cited some decision of Hon'ble Supreme Court in **Smt. Anjali & Ors. Vs. Lokendra Rathod & Ors.** reported in 2023 SAR(Civil) 18, **Kalpanaraj & Ors. Vs. Tamil Nadu State Transport Corp**, **Vimal Kanwar & Ors. Vs. Kishore Dan & Ors.** reported in **2013 SAR(Civil) 584, Helen C. Rebello Vs. Maharashtra State Road Transport Corp.** reported in **AIR 1998 SC 3191.**

9. Heard the learned advocates and perused the observation of Hon'ble Supreme court in different cases cited by the learned advocates. It is true, by virtue of decision of Hon'ble Supreme Court in **Jasbir Kaur(supra), Rani Gupta & Ors(supra), Yogesh Devi(supra)** Apex Court has held while the business of the deceased is subsisting the claimants are not entitled to get the compensation on the head of loss of income except the managerial loss. But on the cited case, the business of agriculture and the business of bus of the deceased was placed before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court is of opinion that these are the business of family and the businesses were not at all hampered due to demise of the deceased.

10. In the present case, there is no evidence to show that he business was actually a family business. However, though there is statement of P.W.1 that she conducted the business; but it is uncertain whether the income of the deceased in the business is at per with the income of the P.W. 1` from the said business.

11. Considering he same, I am of the view by virtue of the decision of Hon'ble Supreme Court in **Smt. Anjali & Ors(supra)** following the decision of Hon'ble Suprme Court in **Malarvizhi and Ors. Vs. United India Insurance Co.**

Ltd. & Anr. that the "*income tax return is statutory document on which reliance can be placed, where available, for computation of annual income*".

12. Considering the facts and circumstances of the case, I am of the view that the observation of the learned Tribunal regarding the income of the deceased is erroneous. The P. W. 3 has deposed before the learned Tribunal that the income of the decease was Rs.2,50,000/- per annum in the assessment year 2008-2009. The same may be adopted to be the income of the deceased in this case.

13. Accordingly, the award passed by the learned Tribunal need be modified.

14. Just and proper compensation of the case is calculated as hereunder:- The claimants are entitled to get the future prospect and general damages according the observation of the Hon'ble Suprme Court passed **Pranay Shetti.** Yearly income is Rs.2,39,968/-. 40% is added towards the future prospect, the amount comes to Rs.95,987/(2,39,968+95,987)=3,35,955/-. 1/3rd is deducted towards the persons expenses Rs.1,11,985/-. The balance is Rs.2,23,970/-. Considering the age of the deceased the multiplier is 16. So, after applying multiplier, the award comes to Rs.35,83,520/-. The claimants are also entitled to get the general damages amounting to Rs.70,000/-. After added the award comes to Rs.36.53,520/-.

15. The award shall carry 6% interest per annum from the date of filing of the claim application. It appears that the appellants have already received the awarded sum of Rs.12,89,500/- so the balance award comes to Rs.23,64,020/-

16. The Insurance Company is directed to pay the balance award together with interest @ 6% interest per annum from the date of filing of the claim

application i.e. 20.4.2009 through the officer of the Learned Registrar General, High Court, Calcutta within six weeks from this date.

17. On such deposit, the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the claimant according to the direction made therein by the learned Tribunal.

18. The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

19. The learned Tribunal shall act upon the production of the certified copy of this award to receive the deficit court fees if any.

20. The LCR be sent down immediately to the office of the learned Tribunal.

21. Learned advocate for the claimant undertake to deposit the special messenger cost for sending the LCR to the learned Tribunal. Accordingly, the learned advocate for the claimant is directed to deposit the special messenger cost with the office within the next week.

22. Accordingly, FMA 129 of 2016 is disposed of.

23. Connected applications, if any, are also disposed of.

24. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)