

22.01.2024
SL No.11
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 478 of 2021

**Smt. Kajal Ray @ Sheetal Ray & Ors.
Vs.**

Cholamondalam MS General Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik

..... for the appellants/claimants.

Mr. Rajesh Singh

...for the respondent/Insurance Co.

The instant appeal has been preferred against the judgment and award dated 26th June, 2020 passed by learned Judge, Motor Accident Claims Tribunal, 3rd Court, Purba Bardhaman, in MAC Case no. 463 of 2014.

The brief facts of the case is that 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 on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the insurance company before the learned tribunal by filling written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 9,10,000/-towards the compensation in favour of the claimants.

Being aggrieved by and dissatisfied with the said award the present appeal have been preferred by the claimants for enhancement of the award.

Mr. Krishanu Banik, learned advocate appearing on behalf of the appellants submits that there are two grounds to determine in this appeal. Firstly: the income of the deceased was wrongly adopted by the learned tribunal to be Rs.6,000/- instead of Rs.8,000/- and secondly: the learned tribunal has awarded the compensation together with interest @ 6% per annum from the date of appearance of the Insurance Company which should be from the date of filing of the claim application.

In arguing the first point, the learned advocate for the appellants submits that the claim application stated the occupation of the deceased to be a driver in transport carriers under national permit. The income was stated in the claim application Rs.6,000/-thereafter amended to Rs. 8,000/- per month. He also pointed out the evidence of PW-1 i.e. the widow of the deceased who stated her husband used to earn Rs.8,000/- per month as a truck driver. He also pointed out the evidence of PW-2 who is the one of the owner of the offending vehicle stated that the deceased was the driver of one of his vehicle and he used to give him Rs.8,000/- per month towards the salary. He argued

that the learned tribunal has considered the statement of the PWs-1 and 2 and after perusing all the evidences on record has held that the salary of the deceased as a Truck driver reasonably be held to Rs. 6,000/- per month. He argued that the observation of the learned tribunal is totally erroneous. The learned tribunal when held that the deceased was a driver. The income of a driver in the year-2010 is not the less than Rs.8,000/-. He further argued that the learned tribunal has committed error in assessing the income of the deceased as a driver. In support of his contention he cited some decisions:- ***Jaya Biswal & Ors. Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. & Anr.*** reported in ***(2016)1 TAC 713, Sushila and Others Versus Ram Swaroop and Others*** reported in ***(2023)2 TAC 709 (S.C.), Smt.Kalavati & Ors. Versus Mirza Kaisar Baig & Anr.*** reported in ***(2022) 4 TAC 391 (S.C.)***.

By citing those judgments he argued in the case of ***Jaya Biswal*** the Hon'ble Supreme court has taken the income of the driver Rs.10,000/- per month. In ***Sushila and Others*** the Hon'ble Supreme Court has taken the income of the driver to be Rs. 20,000/- per month. In ***Smt. Kalavati & Ors.*** and the Division Bench of this Court has

taken the income of the driver to be Rs.10,000/- per month. in all cases the income of the driver was assessed by the Hon'ble Supreme Court more than Rs.8,000/-. In this case, the claim of the claimant is restricted to Rs.8,000/- which is not unreasonable.

In case of skilled labour the Hon'ble Supreme Court and the division bench of this Court has assessed the income of the deceased in a fashion that awarded in **Smt. Neeta W/O Kallappa Kadolkar & Ors. ETC. Vs. The div. Manager, MSRTC, Kolhapur** reported in **(2015) ACJ 598**, the income of the carpenter taken to Rs. 12,000/-per month: In **Kunta Devi and Others Versus Bhura Ram and Antoher**, the Hon'ble Supreme Court has taken the income of skilled labour to be Rs. 400/- per day and monthly was reckoned to be Rs.12,000/-. :In **Royal Sundaram Alliance Insurance Co. Ltd. Vs. Sulekha Mondal (Adhikary) & Ors.** reported in **(2019) 3 TAC 68**, The Hon'ble Division Bench of this Court has considered the income of the skilled labour which is a helper of a doctor to be Rs.9,000/- per month.

He finally argued that in all cases the Hon'ble Supreme Court as well as Hon'ble High Court has taken the view that in case of driver as well as in case of skilled labour the income of the deceased cannot be less than Rs.8,000/-. He again

argued that the driving licence of the deceased was filed and properly exhibited before the learned tribunal. It would be revealed from the driving licence of the deceased that the deceased had a driving licence of national permit so he submitted that the income of the deceased must be calculated Rs. 8,000/- per month at length.

In refuting the contention of the learned advocate for the appellant, Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that initially the claim case was filed stating the income of the deceased to be Rs.6,000/- per month. Thereafter, by virtue of the amendment application the claim was enhanced and the monthly income was stated to be Rs.8,000/- per month. To prove the fact of income of the deceased, the widow of the deceased has deposed as PW-1. During her cross-examination, she admitted specifically that she do not know about the contains of the examination-in-chief and it was not read over and explain to her. She ascertains the said examination-in-chief was written as per version of her learned advocate. She also stated in her cross-examination that she submitted the salary sheet of her husband before the Court. Mr. Singh further pointed out that the evidence of PW-2 who is, said to be the owner of the offending truck and employer of

the deceased, during his cross-examination PW-2 admitted that he sold out both the trucks four years back. He also submitted that he never submitted any Income Tax Return and he has no PAN card. He specifically stated that he has no document to show that the victim used to work under him as a driver and he used to earn Rs.8,000/- per month. He admitted that at the time of accident he was not present at the spot of accident. By citing the evidence of PWs. Mr. Singh submits that the case of the petitioner is actually washed out by the cross examination of PW-1, when she stated the entire her statement was recorded as per the version of her learned advocate. He further argued that the PW-2 is said to be the employer of the deceased, who had the knowledge of the accident on the day of accident but, he informs the accident to the police after four days of the death of the deceased. He submits that the conduct of the PW-2 shows that he is not the actual the owner of the truck or employer of the deceased. He argued that no specific document was produced before the learned tribunal. He again argued that the learned tribunal has categorically assessed the evidences in particular and is of opinion that the Rs.8,000/- cannot be taken to be income of the deceased which has to be Rs.6,000/-.

Refuting the citation produced by the learned advocate for the appellant, Mr. Singh submits that the income of the driver has adopted by the Hon'ble Supreme Court in ***Sushila and Others, Jaya Biswasl & Ors. and also in Smt. Kalavati & Ors.*** is of different perspective. The fact and circumstances of the case so different that it cannot be tallied with the facts and circumstances of this case. On the above mentioned case that there are sufficient documentary evidences of the employer to assess the income of the deceased as a driver but in this case the documentary evidence is not forthcoming on behalf of the employer (PW-2). He also contradicted the judgment of Hon'ble Apex Court as well as the Division Bench of this Court regarding the income of skilled labour as observed in ***Kunta Devi (supra), Smt. Neeta W/O Kallappa Kadolkar (supra) and also Royal Sundaram Alliance Insurance Co. Ltd. (supra)***. He submits that in ***Kunta Devi*** the deceased was a carpenter and it has specifically proved three persons were employed under him. In ***Smt. Neeta*** it is also a case of carpenter and there were sufficient evidence regarding the income of the deceased in ***Royal Sundaram Alliance Insurance Co. Ltd.*** the deceased was a helper of a doctor (village Doctor). In which the doctor has specifically adduced before the

learned tribunal that how the deceased help him in treating the patient. He argued that the observation of the Hon'ble Apex Court and the Divisional Bench of this Court is not applicable in this case. He further argued that there are several observation of Hon'ble Supreme Court and this Court since the year 2003 to 2024 wherein it would be revealed that the income of the driver was adopted by this Court not more than Rs. 5,000/-. He further argued that an uniformity has been adopted by this Court in several occasions that when the deceased died in a road traffic accident within the year 2010, the notional income was adopted Rs. 3,000/- when he died between the year 2011 to 2014 the notional income was adopted Rs. 4,000/- per month, and when he died on 2015 onwards the notional income was adopted Rs.5,000/- per month. The same view was adopted by this Court on several occasions and all the Courts are adopting the same view. The same observation cannot be overlooked in this case. He further places the exact chart of judgment passed by the Hon'ble Supreme Court as well as the Hon'ble Division Bench and Hon'ble Single Bench of this Court. He also mentioned the date of order, year of accident and the income and vocation of the deceased adopted by the Court. The said list of reference is hereby reflected as follows:-

	Reference	ORDER DATE	HON'BLE JUDGE (S)	YEAR OF ACCIDENT	INCOME	VOCATION
A	AIR 2020 SC 4508 Lalan D. vs Oriental Insurance	17.09.2020	Sanjay Kishan Kaul + Ajay Rastofi + Aniruddha Bose JJ	December, 2003	3,500 /-	Skilled labourer in building construction project
B	2023 (1) TAC 124 Chandrasakaran vs Gen. Manager, TNSRTC	09.11.2022	A.S. Bopanna + Pamidighantam Sri NarashimaJJ	2011	3,000 /-	Agricultural labourer
C	(2015) 11 SCC 235 M k Goinathan vs J Krishna	17.04.2014	P. Sathasivam CJI + Ranjan Gogoi + N V Ramana JJ	1996	8,000 /-	'Tool & Die Engineer' in Malaysia
D	(2014) 4S CC 505 – Savita vs Bindar Singh	25.03.2014	Gyan Sudha Misra + Pinaki Chandra Ghose JJ	2010	3,000 /-	Service – salary certificate not believed
E	(2013) 16S CC719 – Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service	03.10.2013	G S Singhvi + V Gopala Gowda JJ	1998	5,000 /-	Polisher – skilled job
1	FMA 814/23 Aditya Parua	02.09.2023	Sanjib Banerjee + Suvra Ghosh	2015	5,000 /-	Service- employer gave evidence
2	GMA 1027/18 Alo Mallick	06.09.2019	DO	2014	4,000 /-	DO
3	FMA 1068/2019 Biva Maity	12.09.2019	DO	2000	3,000 /-	DRIVER
4	FMA 1062/2019 Istasam	09.09.2019	DO	2015	5,000 /-	PRIVATE TOTOR
5	FMA 2997/2002 Tapasi Das	17.09.2019	DO	2001	2,000 /-	WORKER
6	FMAT 162/19 Arati Khan	24.12.2019	Samapti Chatterjee + Monojit Mandal	2015	5,000 /-	WORKER
7	FMAT 83/2020 Dali Rani Updahyay	05.03.2020	Rajasekhar Mantha	2014	4,000 /-	
8	FMAT 1316/2019 Dipali Ghosh	14.07.2021	Sekhar B Saraf	2016	5,000 /-	DRIVER
9	FMAT 23/2020 Chhabi Pakhira	28.02.2022	Subhasish Dasgupta	2013	4,000 /-	Pump Repairing Mechanic
10	FMA 307/2021 Durga Maity	03.10.2023	Bivas Pattanayak	2013	4,000 /-	Self employed
11	FMA 1021/2019 Aleya Bibi	15.12.2023	Subhendu Samanta	2013	4,000 /-	Labour Supplier – 2 witnesses
12	FMAT 1160/2014 Arjina Sekh	06.09.2023	DO	2013	5,000 /-	Deed Writer – evidence produced

Mr. Singh has also produced a notification of minimum wages rate in West Bengal w.e.f. August, 2010 in support of the fact that the deceased died in the year 2010, the same notification reflects that the minimum wages rate for highly skilled labour was not more than Rs.215 per day. In citing such notification he submits that the income adopted by the learned tribunal is not erroneous. He prayed for dismissal of the instant appeal.

Heard the learned Advocate at length. It appears that the income of the deceased is the sole issue to be determined in this appeal. The learned Tribunal has considered the income of the deceased to be Rs.6,000/- per month. The appellant is here for enhancement of the monthly income of the deceased to be Rs.8,000/-. He has cited some decisions of the Hon'ble Apex Court wherein the income of the deceased more than Rs.8,000/-. The learned Advocate for the Insurance Company has also cited the relevant judgment of the Apex Court as well as this Court wherein the driver of the income of the driver was assessed less than Rs.6,000/-. Mr. Singh submitted the minimum wages rate issued by the Government of West Bengal w.e.f. August, 2010. The minimum wages rate has stated the highly skilled labour Rs.215/- per day.

In this case, the deceased was a driver of a heavy vehicle the driving licence of the driver of the deceased was marked as Exhibit before the learned Tribunal. It is true that this Court has adopted the view regarding the fixing of notional income in several stages of year when the deceased was died. The notional income and the calculation thereof is actually not applicable in this case as it has been specifically proved that the deceased was a driver. It is quite impossible or unimaginable to believe that a person having the driving licence of heavy vehicle be *sit* without his job all over year or all over the month. However, it is true that it has not been proved before the learned Tribunal how many days in a month the deceased was employed for the driver.

Considering the entire aspects, in my view, the notional income adopted by this Court on several occasions cannot be adopted herein. However, in considering the present facts and circumstances of this case, it think it necessary that the monthly income of the deceased, who was a driver of a heavy vehicle for the year 2010 cannot be less than Rs.7,000/- per month. Accordingly, the award passed by the learned Tribunal need be modified.

The claimant was also entitled to get the interest from the date of filing of the claim application. Learned Tribunal has directed that the interest shall run from the date of appearance of the Insurance Company which appears to be improper and beyond the direction of the statutes.

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

Calculation of compensation

1. Monthly Income	:Rs.7,000/-
2. Annual income be assessed as (Rs.7,000 X 12)	:Rs.84,000/-
3. Add: 25% Future prospects	<u>:Rs.21,000/-</u> :Rs.1,05,000/-
4. 1/3 rd deduction	<u>:Rs.35,000/-</u> :Rs.70,000/-
5. Multiplier 14 (Rs.70,000 X 14)	:Rs. 9,80,000/-
6. Add: General Damages	<u>:Rs.70,000/-</u> :Rs.10,50,000/-
Less: Tribunal awarded	<u>:Rs.9,10,000/-</u> :Rs.1,40,000/-

The Insurance Company is directed to pay the balance award alongwith interest @ 6% per annum from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta within six weeks from this date. The Insurance Company is further directed to pay the amount of interest upon the earlier award of Rs. 9,10,000/- @ 6% interest since 11.12.2014 to 07.06.2016. After such deposit

the office of the learned Registrar General, High Court, Calcutta shall disburse the same in the name of the appellant Nos. 1 and 3 equally according to the prevalent Rules subject to ascertainment of payment of deficit Court Fees.

The office of the learned tribunal shall receive the DCF on production of the certified copy of the instant order.

Let the LCR be sent down immediately before the learned tribunal.

The instant FMA 478 of 2021 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.)

