30.1. 2024
item No.10
n.b.
ct. no. 551

FMA 1780 of 2018
with
IA No. CAN 1 of 2018(Old No. CAN 1828 of 2018)

National Insurance Co. Ltd.
Vs.
Sikha Halder & Ors.

Mr. Rajesh Singh,
.....for the appellant.
Mr. Jayanta Kumar Mondal,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated November 27, 2017 passed by the learned Tribunal, 2nd Court, Hooghly, Chinsurah in M.A.C. case No. 1535 of 2014.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor 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 was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.37,15,007/- towards the compensation along with 8% interest per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned award, the insurance company has preferred the instant appeal.

Learned advocate for the Insurance Company submits that there are more than three grounds for preferring the appeal by the Insurance Company. **Firstly**, the offending vehicle was not involved in the alleged accident. **Secondly**, the driver of the offending vehicle had no valid driving licence at the time of accident. **Thirdly**, the quantum of compensation on the basis of the income of the deceased as fixed by the learned Tribunal, is erroneous.

Heard the learned advocate for the respondents/claimants.

Having heard the submission of the parties, it appears to me that to prove the claim case the P.W. 1 i.e. widow has deposed. One person appeared as P.W. 2 to be the eye-witnesses. The P.W. 3 is the officer of income tax department who deposed and produced IT return submitted by the deceased. During the evidence of P.W.1, he filed the certified copy of the police case being no.119/2013 dated 30.3.2013 arising out of said accident.

Considering the police report, including FIR, seizure list, it appears that the offending vehicle was well involved in the alleged accident. So, the first point of appeal is turned down.

It appears from the evidence that the Insurance Company has produced one witness before the learned Tribunal to be O.P.W.1. He was the licensing clerk of the M.V. department, R.T.O. Hooghly, Chinsurah. He produced the extract copy of relevant registrar wherefrom it appears that the driver of the offending vehicle had no valid licence rather his licence was not renewed at the dete of alleged accident i.e. 29.3.2013. Learned Tribunal has perused the evidence of O.P.W. 1 but is of opinion that the licensing clerk should have produced the entire registrar. However, the observation of the learned Tribunal is not correct. The authorised Government staff can not be disbelieved. The driving licence was not valid at the time of accident. Accordingly, the Insurance Company is not liable to pay the compensation. However, it appears that the offending vehicle was well covered under the policy ofInsurance Company at the date of accident; according to the observation of the Hon'ble Supreme Court in **Swaran Singh**, the Insurance Company may be directed to pay the compensation and in tern, they are at liberty to recover the same from the owner of the offending vehicle according to the procedure laid down in the **Swaran Singh**. This point decided in favour of the Insurance Company.

Considering the quantum of the compensation assessed by the learned Tribunal, it appears to me that IT return of the deceased for the assessment 2013-14 has been produced by the P.W.3. From the said IT return, it appears that the gross total annual income of the deceased was mentioned as Rs.6,17,858/-. The learned Tribunal has adopted the same as a yearly income of the deceased. However, the learned Tribunal has erroneously not deducted the tax component from the yearly income. Accordingly, the calculation of the learned Tribunal in fixing the yearly income of the deceased is erroneous. The total applicable yearly income should be the gross total income less the tax component. Tax payable for the assessment year 2013-14 appears from the IT return is Rs.39,120/- The said amount has to be deducted from the annual income of the deceased. Considering the same, the award passed by the learned Tribunal need be modified.

The total compensation is recusted below:

1.	Annual income	: Rs.6,17,581/-
2.	Less tax	: Rs.39,120/-
3.	Net income(annual)	:Rs.5,78,461/-
4.	Less 1/3rd for personal exp.	: Rs.1,92,820/-
		: Rs.3,85,641/-
5.	Multiplier 9 (3,85,641 X 9)	: Rs.34,70,769/-
6.	Add General Damages	: Rs.9,500/-
	Total	**: Rs.34,80,269/-**

After calculation the award comes to Rs.34,80,269/- The award shall carry 6% interest per annum from the date of filing of the claim application i.e. from August 6, 2014 till today.

It appears that the Insurance Company has already deposited of Rs.48,96,239/- with the office of the learned Registrar General , High Court, Calcutta, the same must have accrued some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to calculate the award passed by this Court together with interest.

The office of the learned Registrar General, High Court, Calcutta is further directed to disburse the awarded amount in favour of the claimants according to the direction of the learned Tribunal. After such disbursal the residue is the account of the Insurance Company has to be returned to the Insurance Company along with accrued interest on usual terms and conditions.

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

The office of the learned Tribunal shall act upon to the certified copy of this order to receive the deficit court fees if any.

Accordingly, FMA 1780 of 2018 is disposed of.

Connected applications, if any, are also disposed of.

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

(Subhendu Samanta, J.)