

19.1. 2024
item No.14
n.b.
ct. no. 551

FMA 868 of 2023

Smt. Mitali Ghosh & Anr.
Vs.
The National Insurance Company Ltd. & Anr.

Mr. Krishanu Banik,
.....for the appellants.
Mr. Parimal Kr. Pahari,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated November 5, 2022 passed by the learned Tribunal, Fast Track, 4th Court, Alipore, South 24 Parganas, in M.A.C. case No. 12 of 2018.

The brief fact of the case is that the present appellant being the parents 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 unmarried son 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 was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.13,24,328/- towards the compensation along with 6% interest per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned award, the present application preferred by the claimants before the Appellate Court for enhancement of the award.

Learned advocate for the appellant submits that the only point involved in the appeal is that the learned Tribunal has erroneously calculated the income of the deceased to be Rs.8427/- per month. He argued that the deceased was employed with the Team Lease Skill University and used to earn Rs.15,238/- per month. He informed that the P.W.4 i.e father of the deceased, one of the claimant appeared before the learned Tribunal and file the appointment letter, bank pass book and some salary statement of the deceased. No one appeared before the learned Tribunal on behalf of the private concerned wherein the deceased was employed. However, learned advocate for the appellant submits that it is true that there is no evidence on behalf of the employer of the deceased. He prayed that the matter can be remitted back so, that the claimant may have an opportunity to call for the relevant person of the employer of the deceased for the purpose of proper disposal of the instant claim case.

Heard the learned advocate for the Insurance Company.

It appears that the contention of the learned advocate for the appellant is correct. No one appeared on

behalf of the employer of the deceased to prove the income of the deceased. Accordingly, it is a fit case to remand.

Hence, it is ordered that the instant appeal is dismissed. The impugned award passed by the learned Tribunal is affirmed. The entire matter be remitted back to the learned Tribunal. The learned Tribunal shall rehear the matter afresh from the stage of evidence of claimant.

Learned Tribunal shall allow claimant to adduce the evidences and produce the documents if any, for the same for the purpose of proper disposal of the claim application.

The award amount already received by the claimant, be kept in their custody subject to the final decision of this claim case.

The Insurance Company is also at liberty to adduce any evidence if they so desire.

Considering the same, the FMA 868 of 2023 is disposed of under the above direction. Let the copy of this order be sent down to the learned Tribunal for his information and necessary action.

The claimant is directed to appear before the learned Tribunal on or before March 2024.

The learned Tribunal is further directed to dispose of the instant claim application as early as possible most preferably within August 2024.

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

(Subhendu Samanta, J.)