18.1. 2024
item No.18
n.b.
ct. no. 551

FMA 400 of 2023

National Insurance Co. Ltd.
Vs.
Malati Nayek & Ors.

Ms. Sucharita Paul,
..... for the appellant.
Mr. Jayanta Kr. Mondal,
...... the respondent

The instant appeal has been preferred against the judgment and award dated January 10, 2023 passed by the learned Tribunal, 3rd Court, Bankura in M.A.C. case No. 51 of 2018.

The brief fact of the case is that the present respondent being the parents of the decease unmarried boy have filed an application 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 road traffic accident due the rash and negligent driving of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company by filing written statement.

The learned Tribunal have heard the parties and after receiving evidences, the award sum of Rs.12,87,400/- in favour of the claimants together 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 appeal has been preferred by the Insurance Company.

Ms. Paul, learned advocate appearing on behalf of the Insurance Company submits that the impugned award passed by the learned Tribunal is erroneous.

The Insurance Company has raised plea before the learned Tribunal that the driver of the offending vehicle had a fake driving licence at the time of alleged accident. The driving licence was sized during the course of investigation, the police case was started on the basis of the said accident. One witnesse was appeared before the learned Tribunal as O.P.W.1 and has deposed that deriving licence being no.WB-3720110275874 is not showing in the 'Sarathi Portal' in the name of the driver of the offending vehicle viz. Nikesh Yadav. He also produced the letter of authorization issued by the office of the Motor Vehicles Department and it marked as 'Exhibit-A'. Learned Tribunal has not consisted the plea of the Insurance Company and has also disregarded to peruse the 'Exhibit-A'. She argued that the owner of the offending vehicle has violated terms of the Insurance Company. Accordingly, the Insurance Company is not liable to pay the compensation.

Having heard and perused the materials on record and perused the charge-sheet containing seizure list which contains that the driving licence standing in the name of Nikesh Yadav which was seized by the production of the owner of the offending vehicle. The 'Exhibit-A' reflected that the alleged driving licence is not standing in the name of said person namely, Nikesh Yadav. Accordingly, it is proved that the driver of the offending vehicle was running the vehicle at the time of accident with a fake driving licence. Learned Tribunal has not considered the same issue. Accordingly, the observation of the learned Tribunal is erroneous. In this case, the owner has violated terms of the policy. Accordingly, the Insurance Company is not liable to pay the compensation. However, in terms of Hon'ble Supreme Court passed in **Swaran Singh**, the Insurance Company may be directed to pay the compensation; thereafter, they are at liberty to recover the same according to the law laid down by the Hon'ble Supreme Court in **Swaran Singh** from the owner.

Ms. Paul, learned advocate submits that learned Tribunal has assessed the monthly income of the deceased erroneously the monthly income of the boy aged about 22 years old as mention in the claim application to be Rs.10,000/- per month. The occupation was stated to be business and private tutor. It is true that no evidence was adduced by the claimants to prove the occupation and income of the deceased. However, learned Tribunal has observed that considering the high price index, the notional income of the deceased cannot be taken less than Rs.6,000/-

The notional income has been assessed by the Hon'ble Supreme Court in **Sarala Verma**, wherein the notional income was fixed to be Rs.3,000/- per month when there is no proof of occupational/income of the deceased. The notional income has further considered by this Court on several occasions in regular interval. This Court has observed in earlier occasion that when the accident was happened up to 2010, the notional income would be Rs.3,000/- per month and year 2011-14, the notional income would be Rs.4,000/- per month and within year 2015 onwards, the notional income would be Rs.5,000/- per month.

In this case, Mr. Mondal, learned advocate submits considering the price index of the present essential commodities, the notional income in this case, when the accident happened in the year 2018 can be easily fixed as Rs.6,000/- per month.

It appears that the intervals of fixing notional income is for four years i.e. 2011-2014 and nest intervals would be 2015-2018. So, when accident happened in the year 2018, in this case I am of the view the notional income would be not more than Rs.5,000/-

Considering the submission of the learned advocate Mr. Mondal, I am of a view that to pass an order of compensation there should be an uniformity to assess compensation. For the purpose, of income of the deceased is hereby calculated notional to be Rs.5,000/- per month.

It further appears that the learned Tribunal has calculated compensation erroneously by adding future prospect of 50%. In this case, according to the observation of Hon'ble Supreme Court in **Pranay Shetty**, the future prospect would be 40%.

Learned advocate for the claimants Mr. Mondal submits that the parental consortium was awarded by the learned Tribunal Rs.88,000/-. Hon'ble Supreme Court in several decisions after the passing **Pranay Shetty** has passed the order that the parental consortium has to be awarded in the case of death of a bachelor. In considering the submission of the learned advocate for the claimant, it appears that the Hon'ble Supreme Court in the case of **Pranay Shetty** had a specific observation that the consortium is only available to the wife of the deceased. In the case of bachelor, the claimants may entertain to general damages under the heading loss of estate and funeral expenses.

In considering the observation of the Hon'ble Supreme Court in **Pranay Shetty**, the general damages may be enhanced 10% after every three years. So, in this case, the general damages would be Rs.30,000+ 10%=Rs.33,000/-

Considering all aspects, the award passed by the learned Tribunal need be modified.

The total compensation is recuested below:

1. Monthly income : Rs.5,000/-

2. Add 40 Future prospect	: <u>Rs.2,000/-</u>
	: Rs.7,000/-
3. Annual income	: Rs.84,000/-
(7,000 X 12)	
4. Multiplier 18 (84,000 X 18)	: 15,12,000/-
5. Less 50% personal exp	: Rs.7,56,000/-
6. Add General Damages	: <u>Rs.33,000/-</u>
Total	Rs.7,89,000/-

After calculation, the award comes to Rs.7,89,000/-. The award shall carry 6% interest per annum from the date of filing of the claim application till the payment made to the office of the learned Registrar General, High Court, Calcutta.

It appears that the Insurance Company has already deposited the sum of Rs.25,000/- towards the statutory amount and also Rs.16,72,909/- The said amount has been invested by the office of the learned Registrar General, High Court, Calcutta and must have carried some interest.

The office of the learned Registrar Genera, High Court, Calcutta is directed to calculate award along with interest as directed above and disburse the same award together with interest to the claimants vide two equal account payee cheques within four weeks.

It appears that the court fees has sufficiently paid.

The account of the Insurance Company must have some residue, the same be refunded to the Insurance Company on usual norms.

The Insurance Company is further at liberty to recover the entire amount of compensation from the owner of the offending vehicle i.e. respondent no.3 according to the procedure laid down by the Hon'ble Supreme Court in **Swaran Singh.**

Accordingly, FMA 400 of 2023 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.)