IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMAT 684 of 2011

IA No:CAN/2/2012 (Old No:CAN/1636/2012)

CAN/3/2013 (Old No:CAN/5046/2013)

CAN/4/2014 (Old No:CAN/8176/2014)

CAN/5/2017 (Old No:CAN/11010/2017)

CAN/6/2017 (Old No:CAN/11011/2017)

CAN/7/2023

Reliance General Insurance Co. Ltd.

Versus

Rita Kesh & Ors.

With

COT 27 of 2020

Rita Kesh & Ors.

Versus

Reliance General Insurance Co. Ltd.

For the Appellant/Insurance Co. : Ms. Gopa Das Mukherjee, Advocate.

For the Respondent/Claimants: Mr Krishanu Banik, Advocate

: Mr. Tathagata Banik, Advocate

Hearing on : 24.01.2024

Judgment on : 25.01.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and order dated 15th Day of March, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court Burdwan in MAC Case No. 57/156 of 2009.
2. The present respondent Nos. 1 to 4 have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation.
3. The claim case was contested by the Insurance Company. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.10,49,500/- in favour of the claimants and directed the Insurance Company to pay the compensation. Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred by the Insurance Company.
4. One cross appeal has been preferred by the respondent against the said award only with the prayer of future prospects and general damages by virtue of decision of Hon'ble Apex Court passed in ***Pranay Sethi***. The cross appeal was objected by the Insurance Company on the ground that it was preferred after a long delay of filing of the instant appeal so the COT cannot be entertained. CAN 1 of 2023 is filed for condonation of delay. Heard the learned advocate also perused the body of the CAN 1 of 2023. Considering the submissions of the parties the delay in preferring the cross appeal is condoned.

5. The appeal alongwith the cross appeal be taken for hearing together.
6. Learned advocate for the Insurance Company Ms. Gopa Das Mukherjee submits that the appeal has only preferred in respect of the quantum of the award wherein the learned tribunal has awarded exorbitant amount of compensation by fixing the monthly income of the deceased of Rs. 10,000/-. There are no sufficient document to adopt such income of the deceased. No document of income has been proved by the claimant before the learned tribunal still then the learned tribunal has assessed the income erroneously and without any basis thus the award passed by the learned tribunal need be set aside.
7. In support of his contentions he cited a decision of Hon'ble Supreme Court passed in ***State of Haryana Vs. Jasbir Kaur*** wherein the Hon'ble Apex Court has held that "while there is no convincing evidence of agricultural income so it is not proper to assess the monthly income of the deceased on the basis of the submission made by the claimants".
8. Learned advocate appearing on behalf of the claimants submits that the learned tribunal has correctly assessed the entire facts and circumstances of this case and came to a finding that the deceased had the income of the deceased to be Rs. 10,000/-. He further argued that the claimants have preferred the claim application stating the income of the deceased to be Rs. 40,000/- per month. The deceased was a business man has a paddy

business, fish business and tractor business. He also had a fish business by taking lease of the fish ponds and by selling the fishes. The sufficient document has been produced before the learned tribunal to substantiate the claim. The learned tribunal has considered the entire facts and the documents produced by the claimants and came to a finding that the income of t he deceased should be Rs.10,000/- per month. In this score, the income of the deceased cannot be less than Rs.10,000/-. So, he prayed for dismissal of the instant appeal.

9. By virtue of the cross appeal he submits that the claimants are entitled to get the future prospects as well as the general damages as per Law laid down by Hon'ble Apex Court in ***Pranay Sethi.***

10. In support of his contention the learned advocate for the claimants submits several judgments:

i) ***Muhammed V. United India Insurance Co. Ltd. and Others*** reported in ***(2003) ACJ 894.***

ii) ***Shri Ravinder Kumar Sharma Vs. The State of Assam & Ors.*** reported in ***(1999) air (sc) 3571.***

iii) ***Shivakumar M. Versus The Managing Director, BMTC*** reported in ***IV (2017) ACC 51 (S.C.).***

iv) ***Harpreet Kaur & Ors. Versus Mohinder Yadav & Ors.*** reported in ***AIR (2023) (SC) 111.***

v) ***Smt. Bilasini Mondal Vs. National Insurance Company*** reported in ***(2003) 2 TAC 435.***

vi) ***Smt. Kaushnuma Begum and Ors. Vs. The New India Assurance Co. Ltd. & Ors.*** reported in ***ACJ (2001) 428.***

11. Heard the learned advocate perused the impugned award passed by the learned tribunal. It appears that during the trial the widow of the deceased deposed as PW-1.

12. During her evidence he stated that her husband had different business; he had paddy business wherein he used to earn Rs. 3,000/- per month. He had also fish business for taking lease of several ponds and had a tractor business bearing tractor No. WB-39/4672. The total income of her husband was stated by PW-1 to be Rs. 40,000/- per month. During her evidence he submitted several documents including some receipts issued by a rice meal, photo copy of some documents of a tractor and also photo copies of a number of sale deeds standing in the name of deceased and his family members. Those documents were not properly exhibited before the learned tribunal. Learned advocate for the claimants submits that by virtue of decision of Division Bench of this Court passed in ***Suresh Chandra Panday @ Suresh Chand Panday Vs. The new India Assurance Company Ltd. & Anr.,*** the documents filed before the learned tribunal cannot be considered to assess the just and proper compensation.

13. Heard the learned advocates perused the evidences also perused the decision of Hon'ble Division Bench of this Court passed in FMA 967 of 2009. It appears that at the time of hearing of the

appeal the Division Bench of this Court has considered the medical bills placed in the LCR which was not at all considered by the learned tribunal. In this case it appears that the PW-1 has submitted several documents which were not properly marked or those documents were never identified. The claimants never called the author of those documents to identify or exhibit the same before the learned tribunal. However, the learned tribunal came to an opinion that in view of such entire facts the income of the deceased cannot be less than Rs. 10,000/-.

14. On perusing the observation of the learned tribunal it appears to me that the observation is solely guess work; there is no cogent reason to fix the income of the deceased to be Rs. 10,000/-. While the claim of the claimants was Rs. 40,000/- per month. The claimants have failed to identify the documents filed before the learned tribunal. At this juncture, the learned tribunal should not have considered those documents in total perspective. However, in this stage of appeal I have perused the documents placed in the LCR wherefrom it appears that the business of tractor is a joint business of the family of the deceased. The sale deeds are standing in the name of the deceased and his family members; there are also no direct evidence of fish business. So, the income of the deceased from those family businesses cannot be assessed. Moreover, the income of a family business cannot be said to be stopped after death of the deceased. However, it appears that there are some original money receipts issued by on Shri Durga

Rice Meal in the name of the present deceased. Those documents are originally in nature. Though those bills are not properly proved but from the plain perusal of the bills it appears that the deceased had a business of paddy. Considering the same the monthly income of the deceased cannot be considering in this case as Rs. 10,000/- but it should be Rs.6,000/- per month.

15. Considering the all aspects the award passed by the learned tribunal need be modified fixing the income of the deceased to be Rs. 6,000/- per month. The claimants are entitled to get the future prospects and general damages according to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**

16. The just and proper compensation of this case is calculated as hereunder:

Calculation of Compensation

i) Income	:Rs.6,000/-
ii) Annual Income (Rs.6,000 X 12)	:Rs.72,000/-
iii) Add: 25% future prospects	:Rs. 18,000/-
	:Rs.90,000/-
iv) Less: 1/3rd deduction towards personal Exp.	:Rs. 30,000/-
	:Rs.60,000/-
v) Multiplier 13 (Rs.60,000 X 13)	:Rs.7,80,000/-
vi) Add General Damages	:Rs.70,000/-
	:Rs.8,50,000/-

17. The just and proper compensation of this case come to Rs. 8,50,000/-. The award shall carry interest @ 6% per annum from

the date of filing of the claim application i.e. from 15.05.2009 till the date of deposit of the award before this Court on 31.7.2012. It appears that the Insurance has already deposited the previously award sum before this Court. The deposit must have carried sum interest.

18. The office of the learned Registrar General, High Court, Calcutta is directed to calculate the instant award passed by this Court together with interest as directed above and disburse the same with accrued interest in the name of claimants No. 1-3 vide three equal account payee cheques within four weeks.

19. There may have some residue in the account of Insurance Company the same alongwith the accrued interest may be refunded to the Insurance Company on usual term.

20. The instant FMAT 684 of 2011 alongwith COT 27 of 2020 is disposed of.

21. The office is directed to return the LCR immediately.

22. Connected CAN applications except CAN 7 of 2023 are disposed of.

23. Interim orders, if any, stand vacated.

24. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)