

04.1. 2024
item No.25
n.b.
ct. no. 551

FMA 526 of 2021
with
IA No. CAN 1 of 2019(Old NO. CAN 4062 of 2019)

Khatija Bibi & Ors.
Vs.
The Oriental Insurance Company Ltd. & Anr.

Mr. Krishanu Banik,
Mr. Tathagata Banik,
.....for the appellants.

Mr. Sanjay Paul,
Ms. Jaita Ghosh,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated December 6, 2018 passed by the learned Tribunal, 13th Court, Alipore, in M.A.C. case No. 02 of 2015.

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.10,49,500/- in favour of the

claimants and the Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the case.

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

Learned advocate for the appellants submits that the appeal has been preferred only on quantum. He argued that the learned Tribunal has failed to appreciate the dictum of the Hon'ble Supreme Court passed in ***Pranay Shetty***. The future prospect as well as the general damages have not been awarded according to the direction of the Hon'ble Supreme Court. He further argued that the learned Tribunal has deducted 1/3rd towards the personal expenses of the deceased from the yearly income of the deceased instead of 1/4th. According the observation of the Hon'ble Supreme Court in ***Sarala Verma*** the applicable deduction would be 1/4rd instead of 1/3th. He further argued the impugned judgment and award passed by the learned Tribunal need be enhanced.

Learned advocate appearing on behalf of the Insurance Company Mr. Sanjoy Paul submits that according to the direction of the Hon'ble Supreme Court in ***Pranay Shetty***, the claimants are entitled to get future prospect as well as the general damages.

He further argued that the learned Tribunal has erroneously fixed the income of the deceased to be Rs.10,000/- per month. The P.W. 3 deposed before this Court with a certificate that the deceased used to earn Rs.10,000/-. The certificate was not well proved and it was objected to by the Insurance Company at the time of exhibiting the same. During the evidence of Insurance Company, one employer of the deceased was called for, who produced some vouchers, which contained no seal or stamp. Such voucher cannot be relied upon at this juncture to assess the income of the deceased. On that score, he argued the income of the deceased should not be taken to be Rs.10,000/- per month.

Heard the learned advocates and perused the materials on record only dispute arises before this appellate Court in respect of income of the deceased. It is true that the award of the learned Tribunal has already been satisfied by the Insurance Company by paying the compensation. However, in considering the merit of this ground, it appears that the claim case was filed stating income of the deceased to be Rs.10,000/- per month. P.W. 3 is one of the co-employee of the deceased who stated before the learned Tribunal that the deceased Jahangir Molla used to earn Rs.10,000/- per month. The certificate of income produced by the P.W. 3 was objected to by the learned advocate for the Insurance Company. To substantiate the claim, of Insurance Company have called

one employer, who also produced some salary vouchers before the learned Tribunal. The witness was declared as hostile by the insurance company. During cross-examination, the Insurance Company denied the content of the salary vouchers. Salary vouchers were marked as 'Exhibit B'. On perusing the salary certificate produced by P.W.3(Exhibit 11) and 'Exhibit B' produced by D.W.1, it appears that both documents stated that salary of the deceased to be Rs.10,000/-. The salary vouchers produced by the D.W.1 truly not contained any seal or the stamp. However, the document was produced by the witnesses call for on behalf of the Insurance Company. Though the D.W.1 has declared the hostile on behalf of the Insurance Company but the Insurance Company has not produced any further document to show the income of the deceased is not Rs.10,000/- However, the learned Tribunal had no option but to follow the claim of the appellant. Accordingly, I find no justification to entertain the argument on behalf of the Insurance Company regarding the income of the deceased.

The claimants are entitled to get the future prospect and general damages according to the guideline of the Hon'ble Supreme Court in ***Pranay Shetty***.

In the present claim case, the number of claimants are four, so, the deduction of the personal expenses of the deceased would $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$.

Considering the above observation, the award passed by the learned Tribunal need be modified hereunder.

1. Monthly income	Rs. 10,000/-
2. Annual income (10,000 X12)	Rs.1,20,000/-
3. Add 25% future prospect	<u>Rs. 30,000/-</u> Rs.1,50,000/-
4. 1/4 th Deduction	<u>Rs. 37,500</u> Rs.1,12,500
5. Multiplier as per age '13' (1,12,500 X 13)	Rs.14,62,500/-
6. Add General Damages	<u>Rs. 84,000</u> Rs. 15,46,500/-

After calculation the award comes to Rs.15,46,500/. The learned Tribunal has already awarded Rs.10,49,500/- which was received by the claimants. Balance awarded comes to Rs.4,97,000/-. The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application.

After such payment the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in favour of the claimants according to the direction of the Learned Tribunal subject to ascertainment of payment of deficit court fees.

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

Accordingly, FMA 526 of 2021 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.)