IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

02.01.2024
SL No.14
Court No. 551
Ali

F.M.A. 772 of 2021

The United India Insurance Co. Ltd.
Versus
Lalita Barman & Ors.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
…for the appellant- Insurance Co.
Mr. Sujit Saha
…for the respondents-claimants.

The instant appeal has been preferred against the Judgment and Award dated 23rd December, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Raiganj, Uttar Dinajpur, in MAC Case no. 45 of 2014.

The brief facts of the case is that the present respondents No. 1 to 4 being the claimants have preferred an application before the learned tribunal for getting compensation on the ground that their predecessor 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 case was contested by the present appellant insurance company

After hearing the parties and after receiving the evidences the learned tribunal has allowed the claim case and awarded a sum of Rs. 13,52,000/- towards the compensation and directed the present appellant to pay the 50% of such amount as the vehicle insured by the present appellant is responsible for the 50% towards the contributory negligence of the said accident.

The learned advocate for the appellant insurance company submits that the observation of the learned tribunal is totally erroneous. The learned tribunal has misread the pleadings and evidences of the instant claim case and came to an erroneous findings. The claim application was preferred stating the other vehicle to be responsible for the accident. The investigation of the police is ended in charge-sheet accusing the driver of the vehicle bearing No. AS-03-AC-2563 to be responsible for the accident and the charge sheet have been submitted. It has been specifically noted in the FIR as well as the charge-sheet that due to rash and negligent driving of the driver of the vehicle bearing No. AS-03-AC-2563, the accident was caused.

Mr. Paul, learned advocate for the appellant Insurance Company further submits that the claimant has not made party of the owner and the insurer of the offending vehicle. The present appellant is the insurer of the vehicle which was driven of the victim of this case. The fact of the case goes to show that the vehicle driven by the victim bearing No. WB-59-A-0548 (TATA LPT 1109 (Truck) is not at all responsible for the accident. Thus, he submits that the present appellant is not liable to pay the compensation.

Learned advocate appearing on behalf of the respondents/claimants submits that that learned tribunal has erroneously fixed the liability to the appellant to pay the only 50% of the compensation. Appellant may be directed to pay the entire awarded amount. He further argued that the calculation by the learned tribunal regarding the compensation is not correct. The future prospects was awarded to be Rs. 1,00,000/- in a lump sum manner. He further argued that the learned tribunal has erroneously assessed the funeral expenses and loss of estate; so in that view the entire award passed by the learned tribunal need be set aside and the present appellant be directed to pay the entire compensation.

Heard the learned advocates; perused the materials on records.

In considering the contributory negligence the learned tribunal is of view that the vehicle insured by the present appellant is 50% responsible for the accident.

In considering the submission of Mr. Paul it appears that the claim case has stated that the offending vehicle bearing No. AS-03-AC-2563 was driving the vehicle in a rash and negligent manner and suddenly dashed against the vehicle driven by the victim. Accordingly, the victim sustained grievous injuries and died at the spot.

A police case was registered on the basis of the said accident being Islampur P.S. Case No. 1657 of 2013 dated 12.12.13. The de-facto complainant stated that the vehicle bearing No. AS-03-AC-2563 was driven the car in a rash and negligent manner and as such the accident happened. The investigation of the police ended in charge-sheet wherein the Investigating Officer has submitted the final report containing, inter alia, that both vehicles are involved in the said accident and submitted a charge-sheet against the driver of the offending vehicle bearing No. AS-03-AC-2563.

On that score, the submission of Mr. Paul has got some reliance over the documentary evidences; but in perusing the evidence of eye witnesses (PW-2) who disclosed the fact of accident to the effect that the vehicle bearing No. WB-59-A-0548 (TATA LPT 1109 (Truck) was driven by the victim, while the vehicle reached at Borot More near the power house there was a big hole on the N.H.31 road and for avoiding the hole the vehicle went on the wrong side of the road and in that process the vehicle bearing No. AS-03-AS-2363 coming from the opposite side direction dashed against the vehicle by such the victim sustained grievous injuries on his head and died on spot.

The evidence of PW-2 who is the sole eye witness of this case has stated the accident in a manner which is otherwise to that of the fact of the FIR. The credibility of PW-2 was not shaken by the cross-examination of the insurance company. Considering the same, it appears to me that both the vehicles are jointly responsible for the accident.

On that score, the observation the learned tribunal regarding the fixing liability of 50% of the compensation upon the appellant appears to be justified. Both the vehicles are jointly liable to pay the compensation. The claimants have made party to the insurer of vehicle No. WB-59-A-0548 (TATA LPT 1109 (Truck) so the present appellant is being the insurer of one vehicle is responsible to pay the 50% of the compensation.

In considering the just and proper compensation of this case it appears to me that the learned tribunal has awarded the compensation fixing the monthly income of the deceased to be Rs. 7,500/- thus, the annual income was taken to be Rs.90,000/-. The numbers of claimants are 4. The claimant No. 4 i.e. the respondent No. 4 is the father of the deceased who is not entitled to get the compensation as a 1st Class legal heir of the deceased. Accordingly, the deduction towards the personal expenses would be 1/3rd. The deceased was within the age group of 33 years at the time of accident. According to the observation of **Sarala Verma** the applicable multiplier would be 16. It further appears from the award that the learned tribunal has awarded some amount towards the funeral expenses and loss of estate according to the second schedule of Section 163-A of M.V. Act and also awarded a lump sum amount of Rs. 1,00.000/- towards the love and affection and also awarded further Rs. 1,00,000/- towards the future prospects. As the Hon'ble Supreme Court in **Pranay Sethi** has passed a guideline regarding the future prospects and the general damages thus the observation of the learned tribunal is appears to be not justified according to the observation of the Hon'ble Supreme Court in **Pranay Sethi.** Though the claimants/respondents have not filed any cross appeal but the instant appeal has been preferred against the entire award wherein the future prospects was awarded which appears to be not justified according to the observation of the Hon'ble Supreme Court. Thus, I think it necessary to pass appropriate award in respect of the future prospects and the general damages according to the observation of Hon'ble Supreme Court in **Pranay Sethi.** The deceased was within the age of 40 years so the claimants are entitled to get the 40% towards the establish income of the victim towards the future prospects. The claimants are also entitled to get the amount of Rs. 70,000/-towards the general damages. Accordingly, the award passed by the learned tribunal need be modified. The award shall carry interest @ 6% per annum from the date of filing of the claim application till its realization.

The just and proper compensation is calculated as hereunder:-

The monthly income of Rs.7,500/-. The yearly income Rs. 90,000/-. 1/3rd of which is deducted towards the personal expenses so after the deduction the yearly dependency comes to Rs. 60,000/-. 40% of which is added towards the future prospects so after adding the 40% i.e. Rs. 24,000/- the yearly income comes to (Rs. 60,000/- + Rs. 24,000/- = Rs. 84,000/-). The applicable multiplier is 16 so after applying such multiplier the award comes to Rs.13,44,000/-. The claimants are entitled to get the general damages of Rs. 70,000/-. Accordingly, the just and proper compensation of this case comes to Rs. 14,14,000/-.

It has already been observed the present appellant is responsible to the tune of Rs. 50% of the said compensation. Accordingly, the present appellant is directed to pay the compensation amounting to Rs.7,07,000/-. The insurance company is further directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim application i.e. from 10th March, 2014.

It appears that the insurance company has already deposited Rs. 8,62,511/- at the time of filing of the instant appeal. The said amount must have carried some interest. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the entire amount in favour of the claimants according to the direction of the learned tribunal within four weeks subject to the payment of requisite Court Fees, if any. After such payment the appellant is directed to calculate the instant award and if there is some due to be paid, the insurance company is directed to pay the same through the office of the learned Registrar General, High Court, Calcutta within four weeks and if after such calculation it appears that there are some residue in the account of the insurance company that may be refunded to the insurance company by the office of the learned Registrar General, High Court, Calcutta.

The instant FMA 772 of 2021 is disposed of.

All connected pending applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

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

(Subhendu Samanta, J.)