16.04.2024
SL No.223
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 303 of 2021
With
IA No.: CAN/1/2019 (Old No.:CAN/1465/2019)

Amina Bibi & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...........for the appellants/claimants.

Mr. Sanjay Paul
......for the Insurance Co.

The instant appeal has been preferred against the judgment and award dated 30th November, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 5th Court, Paschim Medinipur, in MAC Case no. 21 of 2014.

The claimants have preferred the instant appeal against the award.

The Stamp Reporter suggests that appeal is preferred in time.

Accordingly, the appeal is formally admitted.

The respondent No. 1 is the Insurance Company, Mr. Paul represents the Oriental Insurance Company. Respondent No. 2 is the owner of the offending vehicle who did not contest before the learned tribunal. Accordingly, notice of appeal upon the respondent No. 2 is dispensed with for the time being.

In Ref.: CAN/1/2019 (Old No.:CAN/1465/2019)

An application being CAN 1 of 2019 (Old No. CAN/1465/2019) is preferred for expeditious disposal of the instant appeal. It appears that the appeal is otherwise ready for hearing.

The learned advocate for the appellant has placed the paper book for speedy disposal of the instant appeal.

Insurance Company has already made his appearance. Accordingly, I take up the hearing of the instant appeal.

FMA No. 303 of 2021

The instant appeal has been preferred against the judgment and award dated 30th November, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 5th Court, Paschim Medinipur, in MAC Case no. 21 of 2014.

The brief fact of the case is that the victim of this case, namely, one Fazu @ Phaju Khan on 02.12.2013 at about 11.00 a.m. was going from Kharagpur to Midnapur boarding by auto rickshaw. When he reached near Satkui at Paraj Motors under P.S. Kharagpur at the time the offending tractor bearing No. WB-33B/5894 which was coming from Mohanpur towards Kharagpur with a very high speed in a rash and negligent manner dashed the auto rickshaw as a result the victim sustained grievous injuries on head and body and died on the spot

The widow and the children of the deceased filed an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation on the ground that the accident occurred due to 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 after hearing the parties and after receiving the evidences has awarded a sum of Rs.3,69,500/- towards the compensation and directed the Insurance Company to pay the compensation together with @ 7% interest per annum from the date of filing of the claim application. The Insurance Company has satisfied the award.

Being aggrieved by and dissatisfied with the said award the claimants have preferred the instant appeal for enhancement of the award.

Mr. Roy, learned advocate appearing on behalf of the claimants submits that the instant appeal is preferred only for enhancement of the compensation on the ground that the learned tribunal has failed to appreciate the factum for awarding the compensation. He submits that the computation of compensation was incorrect. He argued that the learned tribunal has adopted the notional income of the deceased to be Rs. 3,000/- per month. The accident happened in the year 2013. So, in this case, the notional income Rs.4,000/- per month.

He further argued that the learned tribunal has come to an opinion that the deceased was 41 years of age at the time of accident but he adopted the multiplier of 15; according to the observation of the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation,*** affirmed by ***National Insurance Co. Ltd. Vs. Pranay Sethi,*** the correct multiplier would be 14. He further argued that the claimants being the legal heirs of the deceased are entitled the future prospects @ 25% of the admitted income of the deceased as per observation of the Hon'ble Supreme Court in ***Pranay Sethi (Supra).***

Mr. Roy further pointed out that the learned tribunal has deducted 1/3rd of income towards the personal and living expenses of the deceased; in this case the numbers of claimants are 5 so, the applicable deduction would be 1/4th instead of 1/3rd. He further pointed out that the learned tribunal has awarded the general damages of Rs.9,500/- according to the second schedule of Section 163-A of M.V. Act.

The Hon'ble Apex Court in ***Pranay Sethi (supra)*** has specifically held that the general damages of a case under Section 166 of M.V. Act would be Rs.70,000/-. He further argued that the norm of fixing the just and proper compensation has not been correctly adopted by the learned tribunal; thus, the award passed by the learned tribunal requires modification.

Learned advocate appearing on behalf of the Insurance Company, Mr. Paul submits that the award passed by the learned tribunal has already been satisfied. The Insurance Company has already complied with the order passed by the learned tribunal. Now the appeal preferred by the claimants on the basis of some grounds for enhancement of the award cannot be considered. He further argued that the observation of Hon'ble Apex Court in ***Pranay Sethi*** has to be followed.

Heard the learned advocates perused the materials on record it appears that the notional income of the deceased was correctly applied by the learned tribunal, but this Court in several occasions has adopted the view of fixing notional income of a deceased who died in a road traffic accident within the year 2011-2014 and who has no specific document of his income and avocation, the notional income has been adopted by this Court to be Rs.4,000/- per month. So, in this case the same principle may be applied. Accordingly, the notional monthly income of the deceased would be Rs.4,000/- per month. It further appears the deduction towards the personal expenses considering the number of the claimants/dependents in this case it would be $1/4^{th}$ instead of $1/3^{rd}$ (according to ***Sarla Verma (supra).*** By virtue of decision of Hon'ble Apex Court in ***Pranay Sethi (Supra),*** the claimants are entitled to get additional @ 25% of establish income of the deceased towards the future prospects and general damages of this case would be Rs.70,000/-.

It further appears that the learned tribunal has calculated the age of the victim to be 41 years but has adopted the multiplier of 15. In this case following the observation of Hon'ble Apex Court in ***Pranay Sethi (supra)*** as well as ***Sarla Verma (supra)*** the correct multiplier would be 14.

Considering the entire facts and circumstances and considering the materials on record it appears to me that the award passed by the learned tribunal requires modification.

Considering the all aspects, the just and proper compensation of this case would be as follows:-

Calculation of compensation

1. Monthly Income	:Rs.4,000/-
2. Annual Income (Rs. 4,000/- X 12)	:Rs.48,000/-
3. Less: Deduction 1/4th	:Rs.12,000/-
	:Rs.36,000/-
4. Add: Future Prospects	:Rs.9,000/-
	:Rs.45,000/-
5. Multiplier 14 (Rs.45,000/- X 14)	:Rs.6,30,000/-
6. Add: General Damages	:Rs.70,000/-
	:Rs.7,00,000/-
7. Less: Award already received	:Rs.3,69,500/-
	:Rs.3,30,500/-

After calculation the award comes to Rs. 7,00,000/-. The claimant has already received a sum of Rs. 3,69,500/- so the balance award comes to Rs. 3,30,500/-. The Insurance Company is directed to pay the balance awarded sum together with interest @ 6% per annum from the date of filing of the claim application i.e. from 15th January, 2014 till actual payment. The Insurance Company is further directed to deposit the balance award together with interest through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the claimants are at liberty to receive the same from the office of the learned Registrar General, High Court, Calcutta equally according to the general norms of certification and identification.

It appears that the Court Fee has already paid.

The instant **FMA 303 of 2021** is disposed of.

All connected 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.)