IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 770 of 2022

Madhusudan Mondal & Anr.
-Vs-
The United India Insurance Co. ltd & Ors.

For the Appellants/Claimants : Mr. Amit Ranjan Roy

For the Respondents/
Insurance Company : Mr. Guddu Singh

Heard on : 19.06.2023, 26.06.2024, 22.07.2024

Judgment on : 13.12.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. Two claimants had filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, SPL Court at Asansol being MAC Case No.187/2017, claiming an award of Rs. 8,00,000/- whereby the aforesaid deceased expired due to a road traffic accident on 12/11/2017 at about 2:30 pm

2. The offending vehicle, a bus bearing Registration No. JH04H/8054 hit the victim on hit the aforesaid deceased approaching in a rash and negligent manner while the victim was riding a motor cycle as his wife being the pillion rider.

3. The victim was declared dead on the spot and the post mortem of the dead body was held at Jamtara Sardar Hospital.

4. Subsequently, based on a written complaint, Brindapathar P.S. Case No. 106/17 dated 12/11/2017 under Sections 279/304 (A) of the Indian Penal Code was instituted against the driver of the offending truck as aforesaid.
5. The owner of the offending vehicle appeared before the court in receipt of summons and filed written objections. However, he thereafter discontinued contesting the case which proceeded ex parte against him.
6. The respondent, the United Insurance Co. Ltd. contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.4,88,750 /- as compensation with an interest @6% per annum from the date of passing the award that would be paid by the insurance company.
8. The Learned Advocate for the appellant submitted as follows :-
    a. Considering the inflation in the year of 2017, the monthly income of Rs.7,000/- per month instead of Rs.4,500/- ought to have been assessed in the impugned award.
    b. A deduction of 50% instead of 1/3 as personal expenses of the deceased, had he been alive should have been considered.
    c. Personal expenses of 1/3 of the actual income of the deceased were not assessed.
    d. Interest instead of granting from the date of award, should have been calculated from the date of filing of claim application till the date of realization.

9. Learned Advocate representing the insurance company submitted that the insured vehicle was not involved in the accident. Moreover, the victim could not have earned Rs 7,000 per month being a vegetable seller in absence of documents to support such claim. It was further submitted that the parents of the claimant both died on the spot. The claimant cannot seek compensation on account of death, both the appeals arising out of the same accident. The respondent insurance company did not raise the issue of the claimants to have filed separate applications under section 166 of the Motor vehicles Act, seeking compensation with regard to the father and the mother of the victim. It is futile raise such plea at the appellate stage. The victim working as a vegetable seller cannot produce any document to prove the income to be Rs 7,000/- per month. However, consider the fiscal index in the year 2017, the notional income of the victim can be considered to be Rs 6,000 per month.

10. In view of the above observation of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr***.[1] and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***[2] the impugned award of Rs. Rs.4,88,750 /- is modified as follows:-

Monthly Income	6,000	
Annual Income	72,000	6,000 x 12
Future Prospect	18,000	25% of 72,000
Annual Income + Future Prospect	90,000	

[1] 2017(4)TAC 673(S.C)
[2] (2009) 6 SC 121

<table>
<tr><td>Deduction towards Personal Expenses</td><td>30,000</td><td>1/3rd of 90,000</td></tr>
<tr><td>Total Annual Income</td><td>60,000</td><td></td></tr>
<tr><td>Multiplier</td><td>7,80,000</td><td>13</td></tr>
<tr><td>Loss of Estate</td><td rowspan="3">15,000
+
40,000
+
15,000</td><td rowspan="3">70,000+20% of 70,000=
84,000</td></tr>
<tr><td>Loss of Spousal Consortium</td></tr>
<tr><td>Funeral Expenses</td></tr>
<tr><td>Total</td><td>8,64,000</td><td></td></tr>
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11. The appellant/claimant is entitled to a sum of Rs. 8,64,000/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

12. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 8,64,000/- along with 6% per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the Court of Motor Accident Claims Tribunal, SPL Court at Asansol being MAC Case No.187/2017 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.

14. The instant appeal is disposed of accordingly.

15. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
16. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)