19.04. 2024
item No.62
Sws.M
Ct. no. 551

FMA 168 of 2021

Nurjahan Bewa & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

EMr. Saidur Rahaman
.....for the appellant.
Mr. Sanjay Paul
Ms. Jaita Ghosh
.... For the Insurance Company.

The instant appeal has been preferred against the Judgment and award dated 30th November, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 3rd Court, Malda in M.A.C. Case no. 105 of 2012. The claimants have preferred the instant appeal against the award.

The brief fact of the case is that the victim of the present case, namely, Md. Abdur Rashid was a primary teacher in a Government school. On 24.03.2012 at about 16:00 hours, the victim along with other persons was sitting in a stationary van on the non-metal portion of the road near Jan Nagar under Ratua P.S. At the time a truck bearing no. WB-59A 7239 coming from the Bhaluka side and proceeding towards Ratua in an excessive speed rash and negligent manner dashed the victim. By such accident the victim sustained multiple and gravious injuries and died on the spot.

The widow and the children of the deceased preferred an application under Section 166 of MV Act before the learned Tribunal for getting compensation on the ground that the accident caused solely 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 insurance company by filing written statement. After hearing the parties and after receiving evidences, the learned Tribunal has awarded a sum of Rs.15,69,160/- towards the compensation in favour of the claimants and directed the insurance company to pay the compensation.

The insurance company had satisfied the award through the office of the learned Tribunal. The claimants have preferred the instant appeal only on the ground for enhancement of the compensation.

Learned advocate for the appellants, Mr. Rahaman submits that the computation of award passed by the learned Tribunal is erroneous. He firstly submits that the learned Tribunal has deducted 1/3 of income of the deceased towards his personal living expenses. In the present case the number of claimants are 5, so the deduction to the personal expenses would be 1/4 instead of 1/3.

He further submits that the learned Tribunal has adopted the multiplier in this case as 11; the deceased was at the age of 49 years at the time of accident, so applicable multiplier in this case would be 13. He further argued that the learned Tribunal has not considered the future prospects and general damages in this case according to the observation of the learned Apex Court in **National Insurance Company Limited vs. Pranay Sethi and Ors.** He also argued that the interest portion as awarded by the learned Tribunal is in the lower side.

Mr. Paul, learned advocate appearing on behalf of the insurance company raised an objection and submits that the insurance company has already satisfied the award to the learned Tribunal. After receiving such award the claimants have filed the instant appeal only on some baseless ground, so the appeal cannot be entertained.

Heard the learned advocates.

Perused the award passed by the learned Tribunal.

It appears that the deceased was a primary school teacher and his income was sufficiently proved before the learned Tribunal by sufficient cogent oral and documentary evidences. The annual income was correctly assessed by the learned Tribunal to be Rs.2,11,999/-. In this case the number of dependents are 5. According to the observation of Hon'ble Apex Court in ***Sarla Verma vs. Delhi Transport Corporation,*** when the number of dependent are more than 3, the deduction towards the living and personal expenses of the deceased would be 1/4. In this case learned Tribunal has erroneously deducted 1/3 of income towards the personal expenses, in this case the deduction would be 1/4.

The learned Tribunal has adopted the multiplier of this case as 11. Accordingly to the observation of Hon'ble Apex Court in ***Sarla Verma and Ors. vs. Delhi Transport Corporation and another*** and followed by ***Pranay Sethi (supra),*** the applicable multiplier for the deceased at the age group of 46-50 is 13. So in this case the correct multiplier would be 13.

The Hon'ble Apex Court in ***Pranay Sethi (supra)*** has held that the claimants are entitled to get the future prospects, which would be a specific percentage of established income of the deceased considering his age and avocation. The Hon'ble Apex Court in ***Pranay Sethi (supra)*** has held that where the deceased had a permanent job and aged between 40-50 years, the future prospects would be 30% of his actual salary. In this case, the deceased was a primary school teacher, that is, he had a permanent job, thus the claimants are entitled to get the future prospects which would be 30% of the actual salary of the deceased.

In this case the petitioner No.1 is the widow and petitioner Nos. 2-5 are the children. The general damages in this case would be Rs.70,000/- including the loss of consortium and loss of estate and funeral expenses. The Hon'ble Apex Court in ***Pranay Sethi***

(supra) has also held that the general damages would be enhanced 10% after each 3 years of pronouncement of judgment. The ***Pranay Sethi (supra)*** has been pronounced in the year 2017. So the present claimants are entitled to get general damages of Rs.77,000/- (Rs.70,000/- +10%).

Considering all aspects the award passed by the learned Tribunal required modification.

The just and proper compensation of this case calculated as follows:-

Particulars	**Amount (Rs.)**
Annual income	2,11,999/-
Less: 1/4th deduction towards personal and living expenses	53,000/-
	1,58,999/-
Add: 30% towards future	47,670/-
	2,06,669/-
Multiplier	X13
	26,86,697/-
General damages	77,000/-
	27,63,697/-
Less: Award already received	15,69,160/-
Balance payable	11,94,537/-

After calculation the award comes to Rs.27,63,697/-. The claimants has already received an award of Rs.15,69,160/-. Thus the balance award comes to Rs.11,94,537/-. The insurance company is directed to pay the balance award together with 6% interest per annum from the date of filing of the claim application that is from 01.06.2012 till payment.

The insurance company is further directed to comply the order through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such payment the appellants are at liberty to receive the same from the officer of the learned Registrar General, High Court, Calcutta in equal shares.

The payment of compensation subject to the ascertainment of payment of deficit Court fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit Court fees, if any.

FMA 168 of 2021 is disposed of.

Pending 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.)