15.1. 2024
item No.34
n.b.
ct. no. 551

FMA 956 of 2022

Pratima Adhikary & Anr.

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Ashique Mondal,
Mr. Subhankar Mondal
..... for the appellant.
Mr. Rajesh Singh
...... the respondent

The instant appeal has been preferred against the judgment and award dated August 31, 2018 passed by the learned Judge, Fast Track 1st Court, Panchim Medinapore , in M.A.C. case No. 114 of 2014.

The brief fact of the case is that the present respondent 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 unmarried son was died in a road traffic accident due the rash and negligent driving 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 sum of Rs.7,92,000/- in favour of the claimants and directed the opposite party no.2/Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred for enhancement of the award.

Learned advocate appearing on behalf of the claimants submits that the claimant was self-employed businessman who used to earn Rs.2,99,050/- per annum. The deceased was died in a road traffic accident on February 4, 2014. Prior to his death he has filed income tax return with the concerned Income Tax Department for the assessment year 2012-13 and 2013-14. From such return it would be revealed that the deceased used to earn of Rs.2,99,050/-for the assessment year 2013-14. One employee of the office of the Income Tax department has adduced the evidence as P.W. 3 and proved the IT Return filed by the deceased prior to his death. But learned Tribunal has disregarded such documents and assessed the income notionally to Rs.5,000/-. There is no basis of such fixing of notional income of the deceased. The deceased was a self-employed and due to his death the claimant has suffered extreme financial stringency. Thus, he filed this appeal for enhancement of the award.

Learned advocate Mr. Singh appearing on behalf of the Insurance Company submits that the learned Tribunal has considered both oral and documentary evidence. He also considered the merits of the documents. The learned Tribunal had nothing to believe the documents as there are no document of income or employment of the deceased. The learned Tribunal is also of view that the Income Tax Return though were filed but were not proved. He submits that no perversity in such finding. So the impugned award cannot be set aside.

Mr. Singh, learned advocate further submits that deceased was also responsible for the accident. It would be proved that the deceased sustained severe bodily injury while he was travelling the motor cycle. The owner of the motor cycle not made party in this case. So, the compensation is assessed by the learned Tribunal cannot be directed to be paid entirely by the Insurance Company as the deceased was also squarely responsible for the accident.

Heard the learned advocates and perused the materials on record, it appears that IT return was filed by the deceased prior to her death twice for assessment of 2012-13 and 2013-14. It is true, that the return identified by the P.W.3 i.e. one of the employee of the income tax department. P.W. 3further stated before the learned Tribunal that both the income tax return submitted by the deceased were verified by the department. It further appears that by virtue of decision of the Hon'ble Supreme Court passed in (i) **Malarvizhi and Ors. Vs. United India Insurance Co. Ltd. & Anr.** reported **in (2020) 4 SCC 228, (ii) United India Insurance Co. Ltd. Vs. Indiro Devi & Ors.** reported in **(2018) 7 SCC 715; (iii) Kalpanaraj Vs. Tamil State Transport Corp.** reported in

(2015) 2 SCC 764 and (iv) Sangita Arya & Ors. Vs. Oriental Insurance Co. Ltd. & Ors. reported in (**2020) 5 SCC 327** and one reported decision of this Court passed in **New India Assurance Co. Ltd. Vs. Smt Rina Ghosh & Ors.(FMAT 705 of 2021).** The ITR can be considered as the income in a case under Section 166 of the M. V. Act.

The income tax department is a statutory body and the income of the deceased verified by the statutory department cannot be disregarded or overlooked in fixing the compensation case filed under Section 166 of the M.V. Act. So, considered the observation of the Hon'ble Supreme Court in different citations, I am of the view, the learned Tribunal has erroneously fixed the monthly income of the deceased Rs.5,000/- per month. In this case yearly income of the deceased should be calculated Rs.2,99,050/-. It appears that the deceased died at the age 20 years, so, the applicable multiplier in this case according to the **Sarala Verma** would be 18 instead of 17. The claimants are also entitled to get the future prospect which would be 40% to the established income of the deceased. The claimants are the parent of the deceased, so they are entitled to get general damages of Rs.30,000/-.

Considering the aspect, the award passed by the learned Tribunal need be modified.

The total compensation is recusted as under:

1.	Annual income	: Rs.2,99,050/-
2.	Less Personal expenses(50%)	: Rs.2,09,335/-

3.	Add Future prospects(40%)	: Rs.4,18,670/-
4.	Multiplier (18)	: Rs.37,68,030/-
5.	Add non pecuniary general Damages	: Rs.30,000/-
		Rs.37,98,030/-
6.	Less Awarded amount	Rs.7,92,000/-
	Total	**Rs.30,06,030/-**

After calculation the award comes to Rs.37,98,030/-. The claimants have already received the awarded sum of Rs.7,92,000/-. After deduction the balance award comes to Rs.30,06,030/-.

The Insurance Company is directed to pay the balance award sum along with 6% interest from the date of filing of the claim application within six weeks though the office of the learned Registrar General, High Court, Calcutta.

On such deposit, the claimants are at liberty to receive the same according to the prelevant rules equally. The receipt of award of compensation is subject to the ascertainment of payment of deficit court fees if any.

The learned Tribunal shall act upon the certified copy of this order for the purpose of receiving the deposit court fees, if any.

Accordingly, FMA 956 of 2022 is disposed of.

Connected applications, if any, are also disposed of.

(Subhendu Samanta, J.)