S/L 8
15.4.2024
Court No.551
SD

FMA 1002 of 2022

Urmila Bibi & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Ms. Sima Ghosh
... for the Appellants.
Ms. Sucharita Paul
... for the Insurance Company.

The instant appeal has been preferred against the judgment and award dated April 30, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 3rd Fast Track Court, Berhampore, Murshidabad in MAC Case No.335 of 2018.

The brief fact of the case is that the predecessor of the present appellants/claimants, namely, Mansur Sk. On 19.5.2018 at about 9:00 p.m. while was going to Bhakuri more for his personal work, at about 9:45 p.m. one offending vehicle bearing no. WB 58 AQ 7240 (Motor Cycle) which was coming from Berhampore side towards Beldanga side with high speed and rash and negligent manner dashed the victim. As a result the victim sustained severe bodily injury and he was immediately taken to the Murshidabad Medical College and Hospital where he died on the next day, that is, on 20.5.2018.

The present claimants being the legal heirs of the deceased preferred one claim application before the learned Tribunal under Section 166 of the MV Act on the ground that their predecessor died in the road traffic accident due to rash and negligent driving of the vehicle bearing no. WB 58 AQ 7240 (Motor Cycle) duly insured under the policy of the insurance company. The insurance company contested the claim application by filing written statement.

The learned tribunal, after hearing the parties and after receiving the evidences has awarded a sum of Rs.4,90,000/- towards the compensation in favour of the claimants and directed the insurance company to pay the compensation together with interest at the rate of 6% per annum from the date of filing of the claim petition. The said award was satisfied by the insurance company. The claimants have preferred the instant appeal on the ground of enhancement of the award.

Ms. Sima Ghosh, learned advocate appearing on behalf of the appellants submits that the instant appeal has only been preferred by the claimants on the ground that the learned tribunal has erroneously assessed the income of the deceased. She submits that the claim application was filed contending inter alia that the occupation of the deceased was driver and vehicle (truck business). She further argued that the deceased was self-employed person and used to earn Rs.23,000/- per month. The said fact was corroborated by the P.W.1 (the widow). During her examination she deposed that her husband was a driver and he also dealt with brick field business, namely, NRS Bricks and used to earn Rs.23,000/- per month.

Ms. Ghosh further argued that during the course of hearing the driving licence of the deceased was placed before the learned tribunal, and it was marked as Exhibit 6. She argued that the learned tribunal, after perusing the oral and documentary evidence has fixed the notional income of the deceased at Rs.3,000/-. She submits that no document of business has been placed before the learned tribunal but the income of the deceased cannot be fixed Rs.3,000/- per month notionally. She further argues that the income of the deceased would be at least Rs.12,000/- per month on the date of accident.

In support of her argument, Ms. Ghosh has also cited a decision of this Court in ***Smt. Kajal Ray @ Sheetal Ray & Ors. vs. Cholamondalam MS General Insurance Co. Ltd. & Anr.*** passed in ***FMA 478 of 2021*** wherein this Court has observed that when a driver died in the year 2010 his monthly income was calculated to be Rs.7,000/- per month. She further argued that in the case of Kajal Ray (supra), the deceased driver died in the year 2010 but in this case the deceased died in 2018. So, the income of the deceased should not be less than Rs.10,000/- per month from driving.

Ms. Sucharita Paul, learned advocate appearing on behalf of the respondent/insurance company raised an objection and submits that the claim petition has pleaded the occupation of the deceased be a driver and vehicle business. The P.W.1, that is, the widow of the deceased has deviated from the said pleading and stated that the deceased used to earn from a business from brick field. She further argues that no document of business has been placed before the learned tribunal to assess the self-employed business of the deceased. She again pointed out the specific observation of the learned tribunal wherein the learned tribunal has correctly adopted the notional income of the deceased without finding any cogent or relevant document of the income of the deceased.

She submits that the income of the deceased fixing notionally by the learned tribunal was justified and there is no specific document of income. She further argues that though the driving licence of the deceased has been specifically proved, but it does not automatically proved that the deceased was at all employed as a driver, either with another employer or by himself in such occupation. She further argues that no IT Return has been submitted by the claimants before the learned tribunal to show the self-employment of the deceased. So, in this case the notional income of the deceased has to be calculated.

Heard the learned advocates for the parties.

It appears that the particular income of the deceased is a question before this appellate court. The learned tribunal had adopted the notional income of the deceased. The claimants/appellants submit that the learned tribunal must have considered the Exhibit 6, that is, the driving licence of the deceased to assess the income. On the other hand, the insurance company submits that the driving licence is not sufficient to prove the income of the deceased.

I have perused the observation made by this Court in Kajal Roy (supra).

In Kajal Roy (supra), the fact, that the deceased was a driver, has not been challenged; the income of the deceased as a driver was under challenge. In this case though the claim petition stated that the deceased was a driver but it was not specifically pleaded or proved that the deceased had income from his driving occupation. Rather it has been tried to prove before the learned tribunal that the deceased had a business of brick field. It appears that the claimants have pleaded contradictory pleadings and petition before the learned tribunal, thus, learned tribunal has assessed the notional income. Let me consider whether in this case the observation of the learned tribunal is correct or not.

From Exhibit 6 it appears that the deceased had a valid driving licence for heavy motor vehicle carrying goods from 9.5.2017 to 18.5.2020. It is unknown before this Court whether deceased was carrying the occupation of driving or occupation of business at the time of his death. However, considering the fact that the deceased having a valid driving licence of heavy motor vehicle, it is quite disbelievable that a person having such valid driving licence would sit idle in the house without the occupation of driving.

Considering the fact, I think it necessary that the learned tribunal has committed error by fixing the notional income of the deceased. In this case, the learned tribunal should be assessed the income of the deceased towards his occupation of driving.

This court time and again has observed that the income of a deceased, who was driver, would be Rs.7,000/-.

So, the same principle may be applicable in this case. In this case the income of the deceased towards his occupation of driving would be Rs.7,000/- as apropos with the observation made by this Court in Kajal Ray (supra). Accordingly, the award passed by the learned tribunal need be modified.

The just and proper compensation of this case assessed as hereunder:-

Particulars	Amount (Rs.)
Monthly income	7,000.00
Add 25% future prospect	1,750.00
	8,750.00
Annual income (8750X12)	1,05,000.00
Multiplier of 14 (105000 x 14)	14,70,000.00
Less 1/3rd for personal expenses	4,90,000.00
	9,80,000.00
Add: General damages	70,000.00
	10,50,000.00
Less: award received	4,90,000.00
	5,60,000.00

After calculation the award comes to Rs.10,50,000/-. The insurance company has already paid an award of Rs.4,90,000/- together with interest. So, the balance award comes to Rs.5,60,000/-. The insurance company is directed to pay the balance award together with 6% per annum interest from the date of filing of the claim petition, that is, from 21.8.2018 till payment.

The insurance company is directed to pay the balance award together with interest through the office of the learned Registrar General, High Court, Calcutta within a period of six weeks. On such deposit, the claimants are at liberty to receive the amount from the office of the learned Registrar General, High Court at Calcutta on usual norms. The payment 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 Court to receive the deficit court fee, if any.

The instant appeal FMA 1002 of 2022 is disposed of.

All connected applications, if any, stand disposed of.

Let the LCR be sent down immediately before the learned Tribunal.

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

(Subhendu Samanta, J.)