IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

09.01.2024
SL No.6
Court No. 551
Ali

FMAT (MV) 287 of 2022

Malati Tudu & Ors.
Vs.
Bajaj Allianz G.I. Co. Ltd. & Anr.

Mr. Pulak Ranjan Bhattacharyya,
Mr. Pingal Bhattacharayya,
Mr. Rajdeep Sinha
………. for the appellants/claimants.

Mr. Farooque Ali,
Mr. Shahrukh Raja,
Mr. Faizan Md. Zafar
…for the respondent No. 1 Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 23rd February, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 3rd Court, Sadar, Paschim Medinipur, in MAC Case no. 230 of 2013.

The brief facts of the case is that the present appellants being the claimants have preferred an application under Section 166 of the M.V. Act, before the learned tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident 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.

After hearing the parties the learned tribunal has awarded a sum of Rs. 5,09,000/- together with interest @ 8% per annum from the date of filing of the claim application and directed the Insurance Company to pay the compensation.

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

Learned advocate for the appellants/ claimants submits that the learned tribunal has erroneously considered the income of the deceased to be Rs.3,000/- per month. The deceased was a Khalasi and he used to earn Rs. 6,000/- per month. The employer of the deceased i.e. PW-3 deposed before this Court that he used to pay Rs. 6,000/- per month. The employer also proved one certificate which was marked as Exhibit-12 before the learned tribunal but at the time considering the entire facts the learned tribunal is of view that the salary certificate is not legally proved and as the PW-3 being the employer of the deceased is not maintaining the salary register so the income of the deceased as stated by the PW-3 is not believable.

On that score, he has adopted the notional income of Rs. 3,000/-. Learned advocate for the appellants further submits that the observation of the learned tribunal regarding Exhibit-12 is erroneous. The PW-3 himself identified his signature over the Exhibit-12. He also stated that the manager of his office concerned has written the said certificate. He prayed for just and proper compensation alongwith the future prospects which were not granted by the learned tribunal.

Learned advocate appearing on behalf of the Insurance Company has strongly supported the observation of the learned tribunal. He submitted that the learned tribunal has considered the evidence of PW-3 as well as the Exhibit-12. The learned tribunal has correctly opined regarding the probative value of Exhibit-12 and is of opinion that the Exhibit-12 cannot be said to be a document of income. The observation of the learned tribunal is very much clear that non-maintaining the salary Register for his Khalasi, Driver and Staff itself raise doubt over the Exhibit-12. He argued that the learned tribunal has correctly held that the salary certificate filed by the claimants were not proved thus the notional income of the deceased was taken to be Rs. 3,000/- per month. He further argued that there is no error apparent in the impugned judgment and it is not at all perverse so the instant appeal is liable to be dismissed.

Heard the learned advocate perused the Exhibit-12 as well as the evidence of PW-3. The PW-3 appeared as a owner of the vehicle No. WB-33-0044. He has stated that the deceased was employed under him as a Khalasi of the said Truck. He also said that he used to pay Rs. 6,000/- per month as a salary. The salary certificate has also contained his signature and it was marked as Exhibit-12.

During cross-examination, he admitted that he do not maintained in salary Register of the Khalasi, Driver and Staff. He also firmly stated before the learned tribunal that he issue the certificate according to the request of the claimants. In perusing the Exhinbit-12 it appears that the certificate clarified the income of the deceased daily to be Rs. 150/- towards his employment and Rs. 50/- towards the cost of his food. The totaling amount comes to Rs. 200/- per day. It is true, that though the PW-3 is the employer of the deceased but he issued the certificate according to the request of the claimants. It is not the actual procedure of the PW-3 to maintain salary Register of any of his staff. However, it is true that the learned tribunal has only evidence before him to consider.

In considering the evidence the learned tribunal is of opinion that the salary certificate was not correctly proved according to the Law. This is a claim case filed under the provision of Motor Vehicles Act the strict Rules of Law and strict compliance of Evidence Act regarding probative value of a document is not required to be looked into in this case.

It is true that the notional income of the deceased is usually taken to be Rs. 3,000/- per month when there is no specific income of the deceased. In this case, the deceased had a specific income and occupation under the PW-3. However, it is also true that the PW-3 actually not regularly maintained the salary Register of his staff and when the salary certificate was issued on the request of the claimants, there may have some chance of manipulation.

Considering the same and also considering the fact that the daily income was stated in the certificate to be Rs. 200/- per day and it is true that one person cannot be employed for entire 30 days of a month.

In considering the same, I think it necessary to hold that the income of the deceased as a Khalasi under the ownership of PW-3 would be at least Rs. 5,000/- per month. Accordingly, the award passed by the learned tribunal need be modified. However, according to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**, the claimants are entitled to get the future prospects; it would be 40% of the establish income of the deceased.

Having heard the learned advocates for the parties and also considering the materials on record the award passed by the learned tribunal is modified hereunder:-

The monthly income Rs.5,000/-. The yearly income comes to Rs. 60,000/-. 40% is added towards the future prospects i.e. after adding Rs.24,000/- the yearly income alongwith the future prospects comes to Rs.84,000/-. The number of claimants are six so in this case the 1/4th is deducted towards the personal expenses according to the observation of Hon'ble Supreme Court in **Sarla Verma,** so after deduction the yearly dependency comes to Rs. 63,000/-. The applicable multiplier is 16. Considering the age of the deceased to be within the age group of 31-35 years so after adopting the multiplier the award comes to Rs. 10,08,000/-. The claimants are also entitled to general damages Rs. 70,000/- according to the observation of the Hon'ble Supreme Court inn **Pranay Sethi.** So, after adding the general damages the award comes to Rs. 10,78,000/-. The award comes to Rs. 10,78,000/- the claimants has already received the awarded sum of Rs.5,09,000/- the balance award comes to Rs.5,69,000/-. The Insurance Company is directed to pay balance compensation alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned tribunal vide account payee cheques according to the direction of the learned tribunal. On such deposit the claimants are entitled to get the cheques from the office of the learned tribunal after ascertainment of payment of deficit Court fees, if any.

Accordingly, the instant FMAT (MV) 287 of 2022 is disposed of.

All connected pending 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.)