IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

18.01.2024
SL No.21
Court No. 551
Ali

FMA 959 of 2023

Suraj Rao & Ors.
Vs.
Pratima Enterprise & Anr.

Mr. Purna Chandra Maiti,
Mr. M. Mondal,
Ms. Raj Lakshmi Shaw
………. for the appellants/claimants.

Ms. Sucharita Paul
…for the respondent/Insurance Co.

The instant appeal has been preferred against the judgment and award dated 6th February, 2016 passed by learned Judge, Motor Accident Claims Tribunal, 2nd ADJ, Barasat, in MAC Case no. 865 of 2012.

The brief facts of the case is that the present appellants being the claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that he sustained severe bodily injuries 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 before the learned tribunal by filling written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 12,03,260/-together with interest @ 6% per annum in favour of the claimants . The award was satisfied by the Insurance Company.

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

The learned advocate for the appellants submits that the learned tribunal has not properly considered the income of the deceased and there was an erroneous calculation of compensation. He submits that the deceased was an employee of Kamarhati Municipality and the PW-2 appeared before the learned tribunal duly authorized by the Chairman of Kamarhati Municipality and has submitted the service book as well as the pay slip of the deceased for the month of November, 2012. The deceased was died in a road traffic accident on 06.12.2012. From the pay slip it would be revealed that the gross income of the deceased was Rs.16,748/- wherefrom he deducted the Professional Tax amounting to Rs. 130/-. So after deduction of the Professional Tax the income of the deceased has to be calculated to the tune of Rs. 16,618/- but the learned tribunal has assessed the take home salary as stated in the pay slip. He argued that the observation of the learned tribunal in assessing the monthly income of the deceased is erroneous. He further argued that the learned tribunal has not awarded the general damages and the future prospects according to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi.**

Learned advocate appearing on behalf of the Insurance Company, Ms. Paul submits that the learned tribunal has not committed any error in assessing the compensation. The pay slip has stated the net income of the deceased to be Rs.8,290/- the same was adopted by the learned tribunal after considering the materials and after considering the pay slip of the deceased. There is no erroneous finding of the learned tribunal. He further argued that the learned tribunal has committed error by adopting the multiplier of 15. The deceased was 44 years at the time of accident. So, in this case the multiplier would be 14 according to the observation of Hon'ble Supreme Court in **Sarla Verma**. She further argued that the learned tribunal has deducted 1/5th towards the personal living expenses of the deceased. But, in this case, considering the number of claimants 1/4th should be deducted.

Heard the learned advocate perused the materials on record. It appears that the PW-2 is one of the employee of the Kamarhati Municipality who deposed before the learned tribunal and has produced the service book of the deceased and the pay slip for the month of November, 2012. On perusing the pay slip, placed in the paper book, it appears that the gross income of the deceased for the month of November, 2012 was Rs. 16,748/- There are different deductions towards PF, PF Loan, PF interest and other advance etc. It is true, for the purpose of calculating compensation u/s – 166 of M.V. Act the tax component only can be deducted from the Gross Salary. The professional Tax was deducted to be Rs. 130/-. So, after deduction the professional Tax the calculating monthly income of the deceased appears to be Rs.16,618/-. It is further appeared that the number of the claimants are 5 so the deduction towards the personal living expenses shall be 1/4th instead of 1/3rd. The deceased was within the age group of 41-45, so the applicable multiplier would be 14. However, according to the observation of the Hon'ble Supreme Court in **Pranay Sethi** the claimants are entitled to get the future prospects which would be 30% of the actual salary income of the deceased and the claimants are also entitled to get the general damages amounting to Rs. 70,000/-. Considering all aspects the award passed by the learned tribunal need be modified as hereunder.

Calculation of compensation

1.	Gross Salary	:Rs.16,748/-
2.	Professional Tax	:Rs.130/-
		:Rs.16,618/-
3.	Annual Income (Rs.16,618/- X 12)	:Rs.1,99,416/-
4.	30% Future Prospects	:Rs.59,824/-
		:Rs.2,59,240/-
5.	Less: 1/4th	:Rs.64,810/-
		:Rs.1,94,430/-
6.	Multiplier 14 (Rs.1,94,430/- X 14)	:Rs.27,22,028/-
7.	Add: General Damages	:Rs.70,000/-
		:Rs.27,92,028/-
8.	Less: Received Award	: Rs.12,03,260/-
		:Rs.15,88,768/-

After calculation the loss of income comes to Rs.27,92,028/-. The claimants has already received the awarded of Rs. 12,03,260/- and the balance award comes to Rs.15,88,768/-. The balance award shall carry interest @ 6% per annum from the date of filling of this claim application i.e. from 18.12.2012 till today. The Insurance Company is directed to pay the award alongwith 6% interest through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same in the name of all the claimants vide five equal account payee cheques. It appears from the LCR as well as from the paper book that the Court Fee has paid sufficiently.

The instant FMA 959 of 2023 is disposed of.

All connected 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.)