29.4. 2024
item No.4
n.b.
ct. no. 551

FMA 1136 of 2022

Manika Mahato(Bera) @ Manika Mahata(Bera) & Ors.
Vs.
IFFCO Tokio General Insurance Co. Ltd. & Anr.

Mr. Subhankar Mondal
.....for the appellant.
Mr. Rajesh Singh,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated April 21, 20122 passed by the learned Tribunal, Fast Track Court-I, Paschim Medinipur in M.A.C. case No. 46 of 2012.

The brief fact of the case is that the victim, namely, Gobinda Bera was one of the teacher of Nilda High School at Nilda within the district of Paschim Medinipore. On 9.10.2007 while he was proceeding to his school by an auto rickshaw, he met with an accident due to rash and negligent driving of the offending vehicle. By such accident he suffered severe injuries and on 16.11.2010 he succumbed to his injuries at Nurshing Home. The widow, minor daughter and mother of the deceased preferred an application under Section 166 of the M. V. Act before the learned Tribunal for getting compensation on the ground that the victim died due to rash and negligent driving of the Auto Rikshaw duly insured under the policy of the Insurance Company.

The Insurance Company contested the claim by filing a written statement.

Hearing the parties and after receiving the evidence the learned Tribunal has awarded a sum of Rs.23,32,000/- as compensation in favour of the claimants and directed the Insurance Company to pay the compensation. The Insurance Company has satisfied the award through the office of the learned Tribunal.

Being aggrieved by and dissatisfied with the said award the claimant has preferred the instant appeal for enhancement of the award.

Mr. Mondal, learned advocate for the appellant submits that the quantum of compensation is the sole issue in the instant appeal. He pointed out that there are some errors of calculation by the learned Tribunal. These are follows:

1. Monthly income of the issue not properly calculated.

2. Future prospect was also not considered by virtue of the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Shetti.**

Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that the award calculated by the learned Tribunal is also erroneous in respect of fact that that the learned Tribunal has deducted 1/4th towards the personal living expenses of the deceased. Mr. Singh further submits in this case that the number of claimants are three, so, the deducted towards the personal expenses should be $1/3^{rd}$ instead the $1/4^{th}$.

Mr. Singh, learned advocate further argued that general damages was awarded by the learned Tribunal amounting to Rs.1,00,000/- which is exorbitant as per view of the Hon'ble Supreme Court in **Pranay Shetti(Supra).**

Heard the learned advocates and perused the materials on record placed in the paper book. The pay slip of the deceased was placed by the school authority before the learned Tribunal which was exhibited. The said pay slip reflected that the gross salary of the deceased was Rs.20,110/- wherefrom the total deductions was Rs.5,130/-, wherefrom the PF was deducted Rs.1,000/- and cooperative contribution was Rs.4,000/- and the P. Tax was Rs.130/-. To assess the income of the deceased, the net payment for the purpose of calculation would be the gross payment less the tax component. In this case, the tax component of Rs.130/- has to be deducted from the gross salary of Rs.20,110/-. So, after such deduction the correct salary of the deceased would be Rs.19,980/-.

It appears that the learned Tribunal has award future prospect to the tune of Rs.40%. By virtue of the decision of Hon'ble Supreme court in **Pranay Shetti(Supra)** and also considering the fact that the deceased was 32 years of old and was in a permanent job, So, the correct future prospect would be 50% to the actual salary of the deceased. It appears that the learned Tribunal has awarded Rs.72,000/- only, which is the 40% of one year of his calculated salary. The award of Rs.72,000/- towards the future prospects is erroneous. In this case, the claimants are entitled to get future prospect, which would be 50% of the actual salary of the deceased.

In considering the submission of the Insurance Company, it appears to me that the number of claimants are three. They are the widow, minor daughter and the mother of the deceased. According to the observation of the Hon'ble Supreme Court in **Sarala Verma & Ors. Vs. Delhi Transport Corp. & Anr.** followed by the **Pranay Shetti(Supra)** it appears that the deduction towards the personal expenses of this case should be $1/3^{rd}$ instead of $1/4^{th}$.

It further appears that the learned Tribunal has awarded general damages of Rs.1,00,000/- amongs them Rs.50,000/- towards the consortium; Rs.25,000/- towards the loss of state and Rs.25,000/- towards the funeral expenses. According to the observation of Hon'ble Supreme Court in **Pranay Shetti(Supra),** the consortium would be Rs.40,000/- loss of state would be Rs.15,000/- and funeral expenses should be Rs.15,000/- However, the Hon'ble Supreme Court also held that after every three years of pronouncement of **Pranay Shetti(Supra)** the general damages should be enhanced to the tune of

Rs.10%. In this case the claimants are entitled to get general damages of Rs.70,000/- + Rs.7,000/- towards the additional 10% as the award was passed in the year 2022.

Considering the above aspect, the award passed by the learned Tribunal required modification.

1 Annual income	: Rs.2,39,760/-
2. Add future prospect	: Rs.11,9880/-
	: Rs.3,59,640/-
3. Less Personal Exp. 1/3rd	: Rs.1,19,880/-
	: Rs.2,39,760/-
4. Multiplier 16	: Rs.38,36,160/-
5. Add Funeral Exp.	: Rs.16,500/-
6. Add Loss of estate	: Rs.16,500/-
7. Add loss of consortium	: Rs.44,000/-
Total	**: 39,13,160/-**

After calculation the award comes to Rs.39,13,160/-.

The claimant has already received the awarded sum of Rs.23,32,000/-. The balance award comes to Rs.15,81,160/-. The balance award shall carry 6% interest per annum from the date of filing of the claim application i.e. from 15.2.2012.

Insurance Company is directed to pay the above mentioned balance awarded amount to the claimant through the office of Learned Registrar General, High Court, Calcutta within six weeks from the date of passing of the order.

On such deposit, the claimants are entitled to get the same equally. The payment of compensation is subject to ascertainment of payment of deficit court fees, if any. The office of the learned Tribunal shall act upon the certified copy of this to receive the deficit Court fees, if any.

Accordingly, FMA 1136 of 2022 is disposed of.

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.)