IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

15.01.2024
SL No.12
Court No. 551
Ali

FMA 855 of 2023

National Insurance Co. Ltd.
Vs.
Smt. Saraswati Mondal & Anr.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
………. for the appellant/Insurance Co.

Mr. Subhankar Mandal
…for the respondents/claimants.

The instant appeal has been preferred against the judgment and award dated 6th April, 2023 passed by learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Asansol, in MAC Case no. 03 of 2017.

The Insurance Company has preferred the instant appeal.

The report of the Additional Stamp Reporter suggests that the appeal is filed in time.

Accordingly, the appeal is formally admitted.

Register the same.

The respondent No. 1 has appeared through the learned advocate Mr. Subhankar Mandal. Respondent No. 2 is the owner of the offending vehicle who did not contest before the learned tribunal. Accordingly, notices of appeal upon the respondents are dispensed with.

The Insurance Company has preferred this appeal and Mr. Paul appearing on behalf of the

Insurance Company has also prepared the paper books.

The appeal is otherwise ready for hearing.

Let the appeal be taken up for hearing.

FMA 855 of 2023

The instant appeal has been preferred against the judgment and award dated 6th April, 2023 passed by learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Asansol, in MAC Case no. 03 of 2017.

The brief facts of the case is that the present respondent No. 1 being the mother of the deceased has preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that his unmarried son 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 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. 38,43,502/-together with interest @ 6% per annum in favour of the claimant from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned award the present appeal has been preferred by the Insurance Company.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that there are two grounds to prefer the instant appeal.

Firstly: he submits that the offending vehicle was falsely implanted in this case. The present vehicle was not involved in the alleged accident. The claimant in collusion with the other witnesses has entirely prepared the claim case and the learned tribunal without considering the matters on record has passed the erroneous award and directed the Insurance Company to pay the compensation.

He argued that the alleged accident was happened on 1st of February 2015; by virtue of the said accident the Asansol (S) IS, Police Station has started a UD Case No. 51 of 2015; dated 01.02.2015 i.e. on very date of accident. He argued that the FIR was filed on 17.02.2015 i.e. after 16 days of incident. He further argued that the FIR did not explain such in ordinate delay for lodging such FIR. He further argued that the learned tribunal has not considered the plea of the Insurance Company and passed the erroneous order.

Learned advocate appearing on behalf of the claimants submits that the same argument was advanced by the Insurance Company before the learned tribunal on the same ground. The learned tribunal has considered the argument of the Insurance Company and is of opinion the Insurance Company has not produced any cogent evidence to substantiate their plea. So, at this juncture, grounds of appeal for preferring the instant appeal regarding the implantation of the vehicle in this instant case is erroneous. He prayed for just and proper compensation.

Heard the learned advocates perused the materials on records. It appears that the alleged accident was happened on 01.02.2015. The FIR was lodged on the basis of a written complaint of the present claimant/respondent No. 1. Respondent No. 1 is the mother of the deceased. It has been stated in the FIR that the de-facto complainant was not present at the time of accident and due to the sudden demise of her son, she suffered immense mental pain and agony and became ill; thus, the FIR was lodged in delay of 16 days. The de-facto complainant i.e. the claimant also appeared as PW-1 before the learned tribunal and corroborated the same facts of FIR. The investigation of the police is ended in charge-sheet. Evidence goes to show that the present vehicle bearing No. WB-38 K/0252 is involved in the alleged accident. The statement of available witnesses recorded under Section 161 CrPC as well as the seizure effected in respect of the police case proved vehicle bearing No.WB-38 K/0252 is responsible for the accident.

Considering the entire materials on records and considering the observation of the learned tribunal, it appears to me that the points of argument raised by the Insurance Company regarding the non-involvement of the vehicle cannot be ascertained at this stage.

Secondly: Mr. Paul, learned advocate for the appellant submits that the learned tribunal has erroneously awarded the compensation on the ground of loss of consortium. The loss of consortium is only available in respect of the spouses.

The present appellant/claimant is the mother of the deceased. So, she may entitled to the general damages under the head of loss of estate and the funeral expenses totaling Rs. 30,000/-. However, it appears that after the pronouncement of the judgment of Constitution Bench of Hon'ble Apex Court in **Pranay Sethi** the three years has already been elapsed. So, the claimant is entitled to get the 10% of such general damages after lapse of three years.

In that score, the general damages would be Rs.33,000/-. Considering the entire aspects the award passed by the learned tribunal needs some modification.

The learned tribunal has correctly awarded the compensation after applying the multiplier amounting to Rs.37,73,502/-. The claimant being the mother is entitled to get the general damages amounting to Rs. 33,000/- under the heading of loss of estate Rs.15,000/-funeral expenses Rs.15,000/- together with 10% interest. Thus, the Rs. 33,000/- has to be added alongwith the said amount. After adding all the heads the total compensation comes to Rs. 38,06,502/-.

The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 15.05.2015.

It appears that the Insurance Company has already deposited Rs. 25,000/- towards the statutory deposit vide OD Challen No. 1471 OD dated 11.08.2023. By virtue of the order of stay passed by this Court, the Insurance Company has also deposited Rs. 57,59,789/- vide OD Challen No. 2406 dated 20.11.2023. It appears that the Insurance Company has deposited a total amount of Rs.57,84,789/-.

The office of the learned Registrar General, High Court, Calcutta is directed to calculate the award passed by this Court and disburse the same from the account of the Insurance Company to the claimant within four weeks. It appears that there may have some residue in the account of the Insurance Company the same may be returned to the Insurance Company on usual terms and conditions alongwith accrued interest, if any.

The instant FMA 855 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.)