15.04.2024
SL No.5
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 914 of 2022

Smt. Namita Ruidas & Ors.
Vs.
National Insurance Co. Ltd. & Ors.

Mr. Krishanu Banik,
Mr. Tathagata Banik
……for the appellants-claimants.

Ms. Gopa Das Mukherjee
………..for the respondent-insurance Co.

The instant appeal has been preferred against the judgment and award dated 24th day of June, 2024, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, Fast Track, 2nd Court, Burdwan, in MAC Case no. 80 of 2013.

The brief fact of the case is that the predecessor of the present claimants/appellants, namely, one Manik Ruidas on 09.03.2013 at about 21.30 hours, when he was standing by the side of Burdwan-Arambagh road near Ananda Pally More, Seharabazar, Burdwan, one motor cycle bearing No. WB-42P/6385 coming with high speed from Burdwan side dashed the victim. As a result, the victim received severe bodily injuries and he was removed to Burdwan Medical College and Hospital. His condition became deteriorated and he was shifted to SSKM Hospital, Kolkata where he was succumbed to his injuries on 12th day of March, 2013.

The claimants are the legal heirs of the deceased who filed the claim application before the learned tribunal on the ground that victim Manik Ruidas died due to the rash and negligent driving of the driver of the offending vehicle (motor cycle) bearing No. WB-42P/6385 duly insured under the policy of the Insurance Company/respondent.

The claim case was contested by the Insurance Company/respondent by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.9,26,800/- as compensation in favour of the claimants and directed the Insurance Company to pay the compensation.

By virtue of such direction the Insurance Company has satisfied the claim, but the claimants have preferred the instant appeal for enhancement of the award.

Learned advocate, Mr. Krishanu Banik appearing on behalf of the appellants/claimants submits that he has only challenged the instant appeal on the basis of three grounds:-

Firstly: The income of the deceased fixed by the learned tribunal notionally is erroneous.

<u>Secondly:</u> The deduction towards the personal and living expenses of the deceased was not correctly assessed by the learned tribunal, and

<u>Lastly:</u> The claimants are entitled to get the 10% of the general damages according to the observation of the Hon'ble Apex Court passed by ***National Insurance Company Ltd. Vs. Pranay Sethi.***

<u>Regarding Income</u>

Mr. Banik submits that the claim application was preferred containing, inter alia, that the deceased was in service under the proprietorship Company of M/s Ajit Kumar Chatterjee, C/O. Debabrata Mukherjee, Government contractor, and used to earn Rs. 6,949/- per month. The widow of the deceased appeared as PW-1, who, during her examination-in-chief has stated that her husband used to earn Rs. 6,949/- per month. During her deposition he also submitted one Xerox copy of pay register which was marked as "X" for identification. Mr. Banik further argued that the PW-3 is one of the co-employee under the same proprietorship concern who deposed that the deceased was one of the employee of the said Company and used to earn Rs.6,949/- per month.

Mr. Banik further argued that the learned tribunal has disbelieved the entire oral evidence as well as the documentary evidences of the claimants and assessed the notional income of the deceased to be Rs. 4,500/-per month. He submits that there are sufficient documents and grounds to assess the income of the deceased to be Rs. 6,949/- per month. He submits that the income of the deceased cannot be assessed notionally. He further argued that if it is proved that no cogent document has been placed before the learned tribunal then also learned tribunal must have considered the minimum wages as declared by the Government of West Bengal in respect of the said Zone wherein for the relevant year of 2013, the unskilled labour used to earn Rs.5,709/- per month. He placed the relevant Notification of Government of West Bengal, Office of the labour Commissioner, dated 12th June, 2013. He further harped upon the observation of the learned tribunal, that the learned tribunal has erroneously assessed the income of the deceased and submits the income of the deceased should not be less than Rs.5,709/-.

Learned advocate, Ms. Gopa Das Mukherjee appearing on behalf of the Insurance Company has pointed out the relevant portion of the impugned judgment passed by the learned tribunal wherein the learned tribunal has considered the evidences of PW-1 and PW-3. She also pointed out that the observation of the learned tribunal regarding the fixation of notional income of the deceased. She contradicts the argument of Mr. Banik on the ground that though the PW-1 has placed a document of register of income of the deceased but it was not proved before the learned tribunal. She further argued that originally summon was issued upon one Debabrata Mukherjee but PW-3 appeared before the learned tribunal to depose without any proper authorization letter from the said Debabrata Mukherjee. She further pointed out the exhibit 13, placed in the paper book and submits that the exhibit-13 is only a "register of accident" wherefrom it appears that the deceased died in a head injury. She pointed out that no income of deceased from the said concerned i.e. M/s. Ajit Kumar Chatterjee was actually placed before the learned tribunal. Thus, the learned tribunal has correctly assessed the notional income of the deceased Rs. 4,500/-. She further argued that the notional income of the deceased should be Rs. 3,000/- but the income as assessed by the learned tribunal i.e. Rs. 4,500/- is more than the maximum in this case.

Heard the learned advocate for the parties, perused the relevant documents and the evidences. It has been specifically pleaded before the learned tribunal that the deceased was employed under M/s. Ajit Kumar Chatterjee by the ownership of one Debabrata Mukherjee.

The PW-1 has deposed regarding the service of her deceased husband. PW-3 has deposed that the deceased was one of his co-employee under the said Company. It is true that the PW-3 was not properly authorized by the summoned witness, namely, Debabrata Mukherjee to depose, but he placed the register of accident of the said Company wherefrom it appears that the deceased was one of the employee of the said Concern. Though the claimants have failed to prove the particular income of the deceased from the company, but his employment with the M/s. Ajit Kumar Chatterjee, Pvt. Co., has sufficiently proved. So in this case it appears to me that the notional income of the deceased cannot be fixed. Thus, in my view, the learned tribunal should have assessed the income of the deceased from service but not notionally.

In considering the income of the deceased from the service; this Appellate Court has nothing to determine the income of the deceased. However, in perusing the LCR it appears to me that one register of wages was placed by the PW-1 before the learned tribunal which was marked as exhibit-"X" for identification. The said document is a Xerox document which contains the names of the employees under the M/s. Ajit Kumar Chatterjee concerned. The name of the PW-3 as well as the deceased was appearing in the said register of wages. The register of wages was not sufficiently proved before the learned tribunal. So, it was not placed before the Insurance Company to contradict the same. However, considering the beneficial purpose of the instant legislation, I think it would be necessary to assess the monthly income of the deceased from the register of wages. It appears that the deceased was employed under the M/s. Ajit Kumar Chatterjee Concerned, which has been sufficiently proved. The income appearing as a wages which is on the basis of daily rate; the income of the deceased was fixed to be Rs. 5,900/- for the month of February 2013. It appears that the deceased attend the said concerned for 24 days. Thus, the daily wages of the deceased appears from the said document is Rs. 250/- per day.

Considering the average attendance of a person in a private concerned i.e. 20 days, the income of the deceased from the said concerned would be not less than Rs.5,000/- per month. Thus, in this case, I think it justified to hold that the rate of minimum wages as mentioned in the Notification of the Government of West Bengal under the Office of the Labour Commissioner cannot be assessed as it was not placed before the learned tribunal.

Accordingly, in this case, I think it would be fit to assess the income of the deceased from his service Rs. 5,000/- per month.

<u>Deduction towards the personal leaving expenses</u>

It appears that the learned tribunal has deducted the 1/3rd towards the personal living expenses of the deceased. In this case, the numbers of dependents are five (5). Among them widow, two (2) children and parents of the deceased are there.

Considering the number of dependents of the deceased in this case, i.e. more than three (3); the deduction towards the personal leaving expenses of deceased as assessed by the learned tribunal appears to be incorrect. In this case, the deduction towards the personal living expenses would be 1/4th instead of 1/3rd.

<u>Additional 10% of General Damages</u>

Learned advocate, Mr. Banik submits that the learned tribunal has awarded a general damages of Rs. 70,000/- by virtue of decision of Hon'ble Apex Court in ***Pranay Sethi***; he submits that the learned tribunal has not properly followed the observation of the Hon'ble Apex Court in ***Pranay Sethi (supra)*** wherein the Hon'ble Apex Court has guided that the general damages should be enhanced 10% after every three years of pronouncement of judgment. He argued that the Hon'ble Apex Court has passed the order of ***Pranay Sethi*** in the month of September, 2017, the impugned award passed in the year 2021.

So, the 10% of the general damages has to be awarded in favour of the claimants.

Learned advocate for the Insurance Company raised no objection regarding such argument. Accordingly, in this case the claimants are entitled to get the general damages which would be Rs. 77,000/-

Considering the above observations, the award passed by the learned tribunal requires modification.

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

Calculation of compensation

1.	Monthly Income	:Rs.5,000/-
2.	Annual Income (Rs.5,000/ X 12)	:Rs.60,000/-
3.	Add: 40% Future Prospects	:Rs.24,000/-
		:Rs. 84,000/-
4.	Less: Deduction 1/4th on account	:Rs. 21,000/-
	of personal living expenses	:Rs.63,000/-
5.	Multiplier 17	:Rs.10,71,000/-
	(Rs.63,000/- X 17)	
6.	Add: General Damages	:Rs.77,000/-
		:Rs.11,48,000/-
7.	Less: Tribunal awarded	:Rs.9,26,800/-
	Compensation	**:Rs.2,21,200/-**

After calculation the award comes to Rs. 11,48,000/-. The Insurance Company has already paid the award of Rs. 9,26,800/-. The balance award comes to Rs. 2,21,200/-. The Insurance

Company is directed to pay the balance awarded sum together with interest @ 6% per annum from the date of filing of the claim application till its actual payment. Insurance Company is further directed to deposit the said award through the office of the learned Registrar General, High Court, Calcutta within six weeks. After such deposit the claimants are at liberty to receive the same award equally from the office of the learned Registrar General, High Court, Calcutta 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 order to receive the deficit court fees, if any.

The office is directed to return the LCR at once.

The instant **FMA 914 of 2022** 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.)