30.1. 2024
item No.07
n.b.
ct. no. 551

FMA 712 of 2023

Reliance General Insurance Co. Ltd.
Vs.
Ramjan Mallick & Ors.

Ms. Gopa Das Mukherjee,
.....for the appellant.
Mr. Ali Imam Shah,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated 18.5.2023 passed by the learned Judge, Fast Track Court, Durgapur Paschim Bardhaman, in M.A.C. case No. 26 of 2018.

The brief fact of the case is that the present respondent nos. 1 to 3 are the father, mother and brother of the deceased person who was an IIT student aged about 22 years ;he 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 was contested by the Insurance Company by filing written statement.

After hearing the parties, and after receiving the evidences, the learned Tribunal has awarded a sum of Rs22,98,000/- towards the compensation along with 6% interest per annum from the date of filing of the claim application in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award, the Insurance Company has preferred the instant appeal.

Ms. Gopa Das Mukherjee, learned advocate appearing on behalf of the Insurance Company submits that the learned Tribunal has wrongly assessed the amount of compensation by adopting the monthly income of the victim to the extent of Rs.15,000/- per month. The learned Tribunal has also erroneously allowed 40% enhance of future prospects. The deceased was a student of an engineering college. He never placed in job of any of the company; there are no specific evidence before the learned Tribunal to assess his income. On that score, the income adopted by the learned Tribunal is erroneous. He further argued that the learned Tribunal should have assessed the income of the deceased notionally to be Rs.15,000/- per annum in absence of any documentary evidences. She further argued that the claimants have preferred the claim application paying the compensation of Rs.l0,00,000/-, but the learned Tribunal has committed error by awarding more than that the claim amount. She further argued that the claimants are not entitled to get the interest upon the future prospect i.e. the prospective income of the deceased. She placed cross-examination of P.W.1 wherein the father of the deceased deposed that the deceased used to give private tuition; but no such evidence has placed before the learned Tribunal. So, she argued that impugned award passed by the learned Tribunal is exorbitant and it need be set aside.

Learned advocate for the respondent submits that the learned Tribunal has seen the academic qualifications of the deceased. Learned Tribunal also perused the mark-sheet and number obtained by the deceased during his study in the IIT college. The deceased had a good prospect to be admitted in a good job of huge earning but due to sudden accident, the entire prospects of his life and income has been stalled. The present claimants being the dependent parents has suffered immense financial stringency due to sudden demise of the deceased. He further argued that the learned Tribunal has correctly assessed the income of the deceased of Rs.15,000/- per month. The Hon'ble Supreme Court as well as different High Courts has adopted the same view that when a student of promising carrier died in a road traffic accident without entering into the job, his income cannot be adopted less than Rs.15,000/- per month.

He cited decision of **Smt. Yashdamma S. Vs. Regional Managaer, Reliance General Insurance Co. Ltd. & Anr.,** wherein the Hon'ble Supreme Court has fixed the notional income of the deceased of Rs.20,000/- along with future prospects who was final year student of MCA.

In **Smt. Meena Pawaia & ors. vs. Ashraf Ali & Ors.** reported in **2021 SAR Online(SC) 680**, the Hon'ble Supreme Court has fixed the notional income of the deceased Rs.10,000/- pe month who was third year civil engineering student. In **Babli Dixit Vs. Satendra Kumar** reported in **2019(2) T.A.C. 287(Del**), the Hon'ble High Court has verified several cases passed by the Hon'ble Supreme Court and fixed the notional income of deceased, who was a 20 years old B. Tach. Students to be Rs.20,000/- per month along with future prospects taken to be 40%.

From the said judgment, it appears that in **Oriental Insurance Company Ltd. Vs. Deo Patodi,** the Hon'ble Supreme Court has fixed notional income of the deceased of Rs.l8,000/- who was the student of Business Administration Course and had an offer of job from a US based Company. In **New India Assurance Companmy Ltd. Vs. Ganga Devi,** Hon'ble Supreme Court has assessed the fixed notional income of deceased to be Rs.18,000/- who was a graduate in MBBS. In **Ramesh Chand Joshi Vs. New India Assurance Company Ltd.,** the Hon'ble High Court has adopted the notional income of deceased is Rs.25,000/- who was a first year student of B. Tech in Delhi College of Engineering.

Considering the observation of Hon'ble Supreme Court and Hon'ble High Court in different cases it appears to me that in this case death of a student of bright carrier, the Hon'ble Supreme Court as well as the High Court has fixed the notional income of deceased considering their job perspective. It further appears that the fixing notional income by the Hon'ble Supreme Court and by the different High Court is on the basis of course adopted by the deceased and their studies and prospects of getting job. However, in this case there is no such prospects of getting job. Moreover, the fact remains the deceased was a student of IIT and has passed some semesters. In all the semesters his grade was good, the academic qualification appears to be reasonably good all along. The observation of the learned Tribunal in respect of fixing the notional income in this case appears to be not un-justified. However, the deceased was studying in a private engineering college in West Bengal. So, in this score, the notional income of the deceased in my view should be Rs.12,000/- per month.

In considering the future prospects in this case, it appears to me that the learned Tribunal has adopted the future prospects of 40% to the established income of the deceased. So, in this score, the fixing of future prospects by virtue of decision of Hon'ble Supreme Court passed in **Pranay Shetti,** I find no infirmity in fixing the future prospects by the learned Tribunal.

I further appears that the claim was filed by the claimants claiming the compensation amounting to Rs.10,00,000/- just and proper compensation appears to be more than the prayers. There is not illegality for awardingmore compensation than the amount claimed subject to the fact that it should just and proper.

However, the claimants may be directed to pay the ad valorum Court fees on the enhanced amount. Accordingly, the award passed by the learned Tribunal need be modified.

The total compensation is recusted below:

1. Monthly income	:Rs.12,000/-
2. Yearly income	: Rs.1,44,000/-
3. Multiplier 18	:Rs.25,92,000/-
4. Add 40% future prospect	: Rs.10,36,800/-
	: Rs.36,28,800/-
5. Less 50% for living Exp.	:Rs.18,14,400/-
6. Add general exp.	: Rs.30,000/-
Total	**: Rs.18,44,400**

The award shall carry 6% interest per annum from the date of filing of the claim application i.e. 30.1.2015 till today.

It appears that the Insurance Company has already deposited the awarded sum of Rs.34,98,935/- with the office of the learned Registrar General, High Court, Calcutta.

The office of the learned Registrar General, High Court, Calcutta shall calculate the award passed by this Court together with interest and disburse the same amount in favour of the respondent nos.1 and 2 vide equal account pay cheques within four weeks from this date. After such disbursal the residue in the account of the Insurance Company shall be returned to the Insurance Company along with accrued interest on usual terms and conditions.

The payment of compensation is subject to the ascertainment of payment of deficit court fees. The office of the learned Tribunal shall act upon the certified copy of this order to receive the DCF if any.

Accordingly, FMA 712 of 2023 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.)