IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMAT (MV) 508 of 2023
With
IA No: CAN/2/2024

The Oriental Insurance Company Ltd.
versus
Mou Dutta & Anr.
With
COT 73 of 2023
Smt. Mou Dutta & Anr.
Vs.
The Oriental Insurance Company Ltd. & Anr.

For the Appellant/	**: Mr. Sanjay Paul Adv.** **Mr. Ms. J. Ghosh**
For the Respondent No. 1 & 2	**: Mr. Subhankar Mondal, Adv.**
For the Respondent No. 3 (Owner)	**: Mr. Rajdeep Bhattacharya,** **Mr. D. Banerjee, Adv.** **Mr. A. Mukherjee**
Hearing on	**: 01.03.2024**
Judgment on	**: 05.03.2024**

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and award dated 30th day of June, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 4th Court, Barasat, 24-Parganas (North), in MAC Case No. 822/100 of 2016.

2. The brief facts of the case is that the husband of respondent No. 1 was proceeding towards Cuttack side along National Highway No. 5 on 24.03.2016 through a vehicle bearing No. WB 26T/1988 (Mahindra Scorpio), the driver of the vehicle was driving with terrific high speed and rash and negligent manner. By such reckless driving when they reached under Dharamshala Police Station in the district Jajpur, Odisha, all on a sudden the said vehicle capsized the victim including other five passengers sustained serious injuries and shifted to the Badachana Hospital; out of such five injured three including the victim succumbed to their injuries. On the basis of such accident the police registered a suo moto case vide Dharamshala Police Station Case No. 78 dated 25.03.2016.
3. The present respondent Nos. 1 and 2 being the widow and minor son of the deceased filed an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation.
4. The claim case was contested by the Insurance Company by filling written statement.
5. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 20,72,000/-in favour of the claimants and directed the Insurance Company to pay the compensation. Being aggrieved by and dissatisfied with the said award the present appeal has been preferred.

6. Learned advocate Mr. Sanjay Paul, appearing on behalf of the Insurance Company submits that the appeal has been preferred only on the basis of two grounds-

   Firstly, the driver of the offending vehicle did not possess the required driving licence. Thus, the owner of the offending vehicle has violated the terms of the policy; the Insurance Company is not liable to pay the compensation.

   Secondly, the monthly income of the deceased was erroneously calculated by the learned tribunal in assessing the compensation.

7. The claimants/respondent No. 1 sand 2 have also preferred one cross appeal being COT 73 of 2023 on the ground that the learned tribunal has only awarded 10% of the establish income of the deceased towards the future prospects. In this case, the calculation of the learned tribunal is erroneous.

8. Mr. Rajdeep Bhattacharyya appearing on behalf of the owner of the offending vehicle has filed an application being CAN 2 of 2023 under Order 41 Rule 27 of the CPC with the ground that the driver of the offending vehicle had valid driving licence at the time of accident. It is further contention of Mr. Bhattacharyya that the Insurance Company has satisfied the OD claim of the owner regarding the damage of the offending vehicle.

9. Mr. Sanjay Paul, learned advocate appearing on behalf of the Insurance Company submits that on receiving such application being CAN 2 of 2023 he made a specific query to his client through mail. The Oriental Insurance Co. Ltd./appellant in response to the

mail of Mr. Paul has replied to the effect that the OD claim of the owner has been satisfied and the driver of the offending vehicle had valid driving licence at the alleged date of accident. The communication between Mr. Paul and the Oriental Insurance Co. Ltd. are produced before this Court. Let the communication through E-mail and connected documents be kept in the record.

10. The Insurance Company has admitted the fact that the driver of the offending vehicle, namely, Pralay Saha had valid and effective driving licence at the date of accident i.e. on 24.03.2016.

11. Considering the application being CAN 2 of 2024 allongwith the communication between Mr. Paul and the appellant it appears to me that the first ground of the appeal is not required to be dealt with and it is decided against the appellant.

12. In considering the quantum of compensation in this case, it appears to me that the learned tribunal has adopted the annual income of the deceased to be Rs. 2,10,000/-. It appears from the exhibited documents that ITR of the deceased lastly submitted for the assessment year 2014-2015 disclosed his gross annual income was Rs. 2,08,514/-. The learned tribunal in paragraph 54 of the impugned judgment has opined that the amount of ITR can be rounded off to Rs. 2,10,000/-. The ITR of the deceased appearing in assessment years 2014-2015 cannot logically be rounded off to assess the annual income of the deceased. Accordingly, the award passed by the learned tribunal requires modification.

13. It further appears that the learned tribunal has awarded future prospects to the tune of 10% of the establish income of the deceased.

14. By virtue of the decision of the Hon'ble Apex Court in ***National Insurance Company Vs. Pranay Sethi,*** the deceased, who was a self-employed and aged between 40 to 50 years, the applicable future prospects would be 25% of his establish income. Thus, the award also needs modification under the heading of future prospects.

15. Under the above observation the award passed by the learned tribunal is modified hereunder:-

16. The just and proper compensation of this case is calculated as hereunder:-

Calculation of Compensation

i)	Annual Income	:Rs.2,08,514/-
ii)	Less: 1/3rd personal Expenses	:<u>Rs. 69,504/-</u>
		:Rs.1,39,008/-
iii)	Add: 25% Future prospects	:<u>Rs. 34,752/-</u>
		:Rs. 1,73,760/-
iv)	Multiplier 13 (Rs.1,73,760/- X 13)	:Rs.22,58,880/-
v)	Add: General Damages	:<u>Rs.84,000/</u>-
		:Rs.23,42,880/-

17. After calculation the award comes to Rs. 23,42,880/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 28.09.2016 till its payment. It appears that the Insurance Company has initially deposited the statutory deposit of Rs. 25,000/- vide OD Challan No. 2144 dated 13.10.2023 and also further deposited an amounting to Rs. 28,87,267/- vide OD Challan No. 2930 dated 18.02.2023.

18. The office of the learned Registrar General High Court, Calcutta is directed to disburse the same along with accrued interest in favour of the claimants equally within four weeks.

19. After receiving such amount from the office of the learned tribunal the claimants shall inform the Insurance Company regarding the amount they have received along with their bank particulars; on receiving such information the Insurance Company is directed to pay the balance amount of compensation to the claimants equally directly to their bank account within six weeks thereafter.

20. The payment of compensation is subject to the ascertainment of payment of deficit Court Fees, if any.

21. The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit Court fees, if any.

22. The instant **FMAT (MV) 508 of 2013** alongwith **COT 73 of 2023** are disposed of

23. All connected applications, if any, stand disposed of.

24. Interim orders, if any, stand vacated.

25. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)