16.1. 2024
item No.29
n.b.
ct. no. 551

FMA 1346 of 2022

National Insurance Co. Ltd.
Vs.
Smt. Mangli Saren & Ors.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
.....for the appellant.
Mr. Anup Kumar Bag,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated May 13, 2022 passed by the learned Tribunal, Fast Track 3rd Court, Sadar, Paschim Medinipur, in M.A.C. case No. 473 of 2020.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor 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, the learned Tribunal has awarded a sum of Rs.9,50,400/- 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.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that the learned Tribunal has erroneously awarded the compensation in favour of the claimants. In this case, the income of the deceased was calculated to be Rs.6,000/-per month without any basis and without any evidences. In the instant claim case, there are six claimants. The claimant nos. 4 to 6 are the married daughters of the deceased. So, they are not dependent upon the income of the deceased but in this case the learned Tribunal has erroneously deducted $1/4^{th}$ towards the personal living expenses of the deceased instead $1/3^{rd}$. He further argued that the learned Tribunal has considered the consortium in this case beyond law. He argued the loss of consortium was calculated by the learned Tribunal of Rs.2,64,000/- which is beyond the principle laid down by the Hon'ble Supreme Court in **Pranay Shetty.** On that score, he argued that the award passed by the learned Tribunal need be modified.

Learned advocate appearing on behalf of the claimant/respondent submits that the learned Tribunal has not committed any error in passing the impugned award. He argued the income of the deceased was stated in the claim application to be Rs.15,000/-. Though, the income was never been proved by the documentary evidence but P.W. 1 has deposed before the learned Tribunal regarding the income of the deceased. There is no counter affidavit or counter evidence on behalf of the Insurance Company to contradict the variation of P.W. 1. He further argued that the deceased was the mason and according to minimum wages rate issued by the Government of West Bengal with effect from 1.1.2020, the wages of unskilled mason was Rs.8,349/-. He further argued that the learned Tribunal has committed no error in fixing the income of the deceased of Rs.6,000/-. He again argued that the claimant nos. 4,5 and 6 are the married daughter of the deceased. Though they are residing with their husband but they are also dependent upon the income of the deceased. He further argued that the deduction 1/4th towards the persons expenses is correct. He further argued that the claim consortium by the claimant has been specifically delt with by the Hon'ble Supreme Court in **Janabai & Ors. Vs. I.C.I. C.I Lombord Insurance Co. Ltd.** reported in **2022(3) T. A. C. 705(S.C).** He referred the para 13 and 14 of the said judgment regarding the claim of compensation which discussed regarding the claim of compensation.

He argued that the Hon'ble Supreme Court has decided the issue and has held that he consortium is available to the claimants. He further argued the consortium is of different nature may be spousal consortium, perental consortium as well as filial consortium. He argued that the learned Tribunal has specifically categoorized the consortium part. So, there is no error apparent. He prayed for dismissal of the instant appeal.

Heard the learned advocates and perused the materials on record, it appears that the claim case was filed stating the occupation of the deceased to be a mason, monthly income was stated to be Rs.15,000/-. It is true, that wife of the deceased had deposed before the learned Tribunal and filed an affidavit-in-chief that her husband was mason in profession and used to earn Rs.15,000/- per month. It is true, there is no counter evidence or counter affidavit on behalf of the Insurance Company was filed. Let it be considered whether the claim of the Insurance Company has been specifically discussed or considered by the learned Tribunal. In deciding the issue, the learned Tribunal has framed issue nos. 4 and 5. The learned Tribunal has abruptly stated in this case that Rs.6,000/- per mensum can be taken to be the income of the deceased as a mason. The pleadings and the proof regarding the income of the occupation of the deceased is only in respect of version of the claimant. No other corroboration or relative or cogent evidence is forthcoming in this case. However, the minimum wages rate issued by the State Government with effect from 1.1.2020 to 3.6.2022 was not placed before the learned Tribunal. The learned Tribunal has abruptly decided as a guess work. It appears that in the case of the **Sarala Verma** the Hon'ble Supreme Court has categorised that when the monthly income or occupation of a deceased is not forthcoming in case under Section 166 of the M. V. Act. The notional income can be adopted. The notional income in **Sarala Verma** was adopted to be Rs.3,000/- per month. This High Court has adopted the view that in absencde of documentary evidence regarding the proof of income and occupation of a deceased died in an accident up to year 2010, the notional income will be taken to be Rs.3,000/; from the year 2011-14, the notional income adopted Rs.4000/-; from the year 2015 and upwards, the notional income will be Rs.5,000/- per month. In case it appears that the learned Tribunal has not considered the observation of Hon'ble Supreme Court in **Sarala Verma** and also not considered any document either the minimum wages rate or any relevant papers to consider the income of the deceased. Entirely, the income of the deceased was considered as a guess work. The observation of learned Tribunal must be basis some reason. There is not reason to adopt such view. Accordingly, I am of the view that the observation of this Court on the earlier occasions regarding the adopting the notional income from the year 2015 onwards has to be adopted. In this score, the income of the deceased is hereby calculated notionally to be Rs.5,000/- per month.

Admittedly, the respondent nos. 4,5,6 are married daughters. Naturally, the married daughter are residing with their respective husbands on their husband's house. So, the respondent nos.4,5 and 6 are not the dependent upon deceased. In that score, the deduction towards the personal expenses would be 1/3rd instead of 1/4th. The learned Tribunal has adopted wrong view by fixing the deduction towards the personal living expenses to be 1/4th.

In considering the consortium towards the claimants i.e. amounting to Rs.2,64,000/-, it appears that the learned Tribunal has considered the general damages under separate head. He added Rs.6,500/- as funeral expenses, Rs.16,500/- as loss of state and Rs.2,64,000/- towards the loss of consortium including loss of spousal consortium and loss of parental consortium. The loss of parental consortium was calculated of Rs.44,000/- for five claimants.

In considering the loss of consortium, the Hon'ble Supreme Court in **Janabai & Ors(Supra)** has held that consortium may have separate category including spousal consortium, parental consortium, as well as filial consortium. Ultimately, para 14 of **Janabai(Supra),** Hon'ble Supreme Court has held that the claimants are entitled to spousal consortium and parental consortium of Rs.40,000/- each. In considering the general damages there are some divergent view by the Hon'ble Supreme Court as well as Hon'ble High Court of different States to put and end of such divergent views. The Hon'ble Supreme Court has held in **National Insurance Co. Vs. Pranay Shetty** that there should be a uniformity in judgment regarding the award or general damages. By such, the general damages was directed to pay Rs.70,000/- under the heading of loss of state, funeral expenses and loss of consortium. The Hon'ble Supreme Court in **Pranay Shetty** also held that the general damages has to be enhanced 10% after every three years. So, in this case, the total general damages may be Rs.77,000/-. The award passed by the learned Tribunal under the head of general damages appears to be erroneous.

Considering the same, it appears that the award passed by the learned Tribunal need be modified.

The total compensation is recusted as under:

1.	Monthly income	: Rs.5,000/-
2.	Annual income (5000 X12)	: Rs.60,000/-
3.	Add 10% future prospect	: Rs.6,000/-
		Rs.66,000/-
4.	Less 1/3rd personal exp.	: Rs.22,000/-
		Rs.44,000/-
5.	Multiplier 11 (44,000 X 11)	:Rs.4,84,000/-
6.	Add General Damages	:Rs.77,000/-
	Total	**Rs.5,61,000/-**

After calculation the award comes to Rs.5,61,000/-

The Insurance Company is directed to pay compensation along with 6% per annum from the date of filing of claim application i.e. from 9.10.2020 till date. It appears that the Insurance Company has deposited the statutory sum of Rs.25,000/- vide OD challan no.1991 OD dated 21.9.2022 and also deposited Rs.10,53,238 vide OD challan no.3701 OD dated 3.7.2023. The deposited amount must have carried some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to calculate the awarded and to disburse the amount in the in equal three account pay cheques in the name of the claimant nos. 1,2,3.

It appears that at the time of filing of the appeal, the claimant no.3 was minor, the cheque in the name of the respondent no.3 shall withdrawn by the respondent no.1 as a natural guardian mother and she is directed to deposit the same in the name of the respondent no.3 in a nationalized bank in a short term fixed deposit scheme, so the amount may be utilized by the respondent no.3 after obtaining his majority.

The payment of compensation to the claimants is subject to ascertainment of payment of deficit court fees if any.

The learned Tribunal is at liberty to act upon the certified copy of this order to receive the deficit court fees if any.

It appears that the account of the Insurance Company with the office of the learned Registrar General, High Court, Calcutta may have some residue, the residue along with accrued interest be refunded to the Insurance Company on usual terms and conditions.

According, FMA 1346 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.)