IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

F.M.A. No. – 6 of 2024
with
IA No. CAN 1 of 2023 (Old No. CAN 2 of 2014)
CAN 2 of 2024
with
COT 21 of 2024

In the Matter of

National Insurance Co. Ltd
Vs.
Rajeswari Nayek & Ors.

Mr. Deb Narayan Ray,

..... For the Appellant/ Insurance Co.

Mr. A.R. Roy,

..... For the Respondents/ Claimants.

Heard on : 29.02.2024

Judgment on : 04.03.2024

<u>Subhendu Samanta, J.</u>

1. The instant appeal is preferred against a judgment and award dated 27.07.2023 passed by the Learned Judge, Motor Accident Claims Tribunal Fast Track 1st court, in MAC Case No. 37 of 20016.

2. The brief fact of the case is that on 31 December of 2016 at about 09:30 p.m. victim along with his mother coming back home just after close the days business of tea stall, by foot and proceeding towards Mecheda along with the left

morum portion of Srirampur Bus-stand and reached near "Ramkrishna Aragyo Niketan", a nursing home, suddenly the offending vehicle bearing No. WB 31/5542 ACE Magic BS coming from Haldia Side to Mecheda with excessive high speed by a zigzag way, the driver failed to control and dashed the victim from behind and run over the victim who died on spot. The mother of the victim lodged the written complaint with the police by which Tamluk PS Case No.11 of 2016 dated 04.01.2016 was started.

3. The claimants are the mother, widow and minor daughter of the deceased who preferred an application u/s 166 of MV Act for getting compensation. The Insurance Company has contested the claim case by filing written statement. After hearing the parties and receiving the evidences the Learned Tribunal has awarded a sum of Rs. 13,07,000/- as the compensation in favour of the claimants and directed the Insurance Company to pay the compensation.

4. Being aggrieved by and dissatisfied with the said award the present appeal has been preferred.

5. The National Insurance Company Ltd. preferred this appeal on the grounds :

> *i.) The income of the deceased assessed by the Learned Tribunal is erroneous.*
>
> *ii) The driver of the offending vehicle had no valid driving license at the time of accident; accordingly the Insurance Company is not liable to pay the compensation.*
>
> *iii) The award of consortium in favour of three claimants by the Learned Tribunal is erroneous.*

6. On the 1st ground- it is the argument of the Insurance Company that the claimants have stated the income of the deceased to be 10,000/- from the avocation of Tea and Oil Cake shop; no evidence was adduced on behalf of the claimants to substantiate the avocation and income of the deceased. It is further argued that the evidence of PW 1, that is, the mother of the deceased stated that they had a joint business of tea stall, therefrom they used to earn Rs. 8,000/- per month. It was admittedly a joint business thus the income of the deceased cannot be more than 4,000/- per month.

7. Mr. Ray further argued that this court has adopted a view that in absence of sufficient oral and documentary evidences the deceased who died in road traffic accident from the year 2015 onwards the notional income would be 5,000/-. So in this case the Learned Tribunal has erroneously adopted the income of the deceased to be 6,000/- per month. So, in this case, the compensation on the basis of the monthly income of the deceased is erroneous.

8. Learned Advocate for the Claimant/Cross-Objector Mr. Amit Ranjan Roy submits that the Learned Tribunal has categorically observed the evidences and pleadings of the parties. The Learned Tribunal has assessed the income of the deceased on the basis of the circular issued by the Government of West Bengal of the relevant period relating to wages for unskilled workers in Zone B areas. The income adopted by the

Learned Tribunal is not a guess work; the Learned Tribunal is justified in assessing the income of the deceased.

9. Heard the Leaned Advocate. Perused the evidences. PW 1 is the wife of the deceased who stated that her husband used to earn Rs. 10,000/- per month. PW 2 is the mother of the deceased who was present at the time of the accident; she also stated that her son used to earn Rs. 10,000/- per month. No document of income was produced by the claimants.

10. Perused the observation of the Learned Tribunal. The Learned Tribunal after considering the evidences on record has placed his reliance upon the circular issued by the West Bengal regarding wages of unskilled worker in Zone B for the relevant period. The same circular was placed before me. On perusing such circular of minimum wages rate chart as on 01.04.2016, it appears that for the State of West Bengal the minimum daily wages for unskilled labour is Rs. 211.00 paisa.

11. I find the Learned Tribunal has correctly adopted the view in this case, the income of the deceased was correctly adopted to be 6,000/-. I find no justification to interfere with the findings of the Learned Tribunal.

12. In considering the second ground of appeal it is the argument of Insurance Company that the driving licence of the offending vehicle was seized by the police authority. The licensing authority, Tamluk, was summoned to produce the said DL. One employee of licensing Authority appeared before the Learned Tribunal is as OPW- 1, who stated that driving

license was valid till 16.05.2015. Learned Advocate for Insurance Company argued that the alleged accident happened on 03 January, 2016. So it has been proved at the time of accident the driver of the offending vehicle had no valid driving license.

13. He argued that the owner has violated the terms of the policy so, the Insurance Company is not liable to pay the compensation.

14. Learned Advocate appearing on behalf of the claimants submits that the argument advanced by the Insurance Company is not at all correct. Section 15 of M.V Act, 1988 deal with the provision of renewal of driving license after the date of expiry, there was a grace period of one year within which the driving license may be renewed. In this case the alleged driving license was valid up to 16.05.2015 so the driver of the offending vehicle was within the grace period to renew his driving license within 15.05.2016, so, the driving license used by the driver of the offending vehicle cannot be said to be invalid.

15. Heard the Learned Advocate. Perused the seizure list, wherein it appears i.e. DL to used by the driver of the offending vehicle was valid up to 16.05.2015. The OPW 1 also deposed that the driving license was valid till 16.05.2016. To assess the validity of the driving license, let me consider the provision of Section 15 (1) of Motor Vehicles Act 1988.

> ***15.1. Renewal of driving licences. -*** *(1) Any licensing authority may, on application made to it,*

renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made [either one year prior to date of its expiry or within one year] after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learners licence .

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16. It appears from the provision of Section 15(1) of the MV Act, that the grace period for renewal of license after the date of expiry is one year. If the validity of the license of expired and when it was renewed within one year the same shall be renewed with effect from the date of its renewal. Section 15(4) of the said Act also provided for specific fees payable for such renewal.

17. It appears that the Insurance Company has issued summoned upon the owner driver of the offending vehicle; the owner-cum driver of the offending vehicle has deposed before the Learned Tribunal has OPW 3. The owner/Driver admitted the alleged accident, but it appears that the Insurance Company was not asked question regarding the non-validity of the driving license.

18. The driving license was not fake. It is quite unreasonable to believe that a driver shall forget his skill of driving just after the date of expiry of this Dl.

19. Considering the entire circumstances and facts of this case it appears to me other the plea of Insurance Company regarding the used of valid driving licence by the driver of the offending vehicle at the time of alleged accident cannot be substantiated.

20. In considering the grounds of Insurance Company regarding the compensation of consortium of Rs. 1,32,000/- as awarded by the Learned Tribunal, it appears to me that, the Hon'ble Apex Court in **National Insurance Company Vs. Pranay Sethi** has observed that the general damages including the loss of estate, Loss of funeral expenses and consortium for the widow would be Rs. 15,000/-,15,000/- and 40,000/- respectively. In this case the Learned Tribunal has awarded consortium in favour of three persons which appears to me in conflict with the law laid down by the Supreme Court In **Pranay Sethi.** Thus, in this case the claimants are entitled to get Rs. 40,000/- towards the consortium in favour of the widow of the deceased only. However, the Hon'ble Supreme court also suggests that the payment of compensation under the general damages has to be enhanced after every three years to the tune of 10%. In this case the claimants are entitled to get Rs. 44,000/- only towards the consortium.

21. So, the Learned Tribunal has awarded excess amount of Rs. (1,32,000 - 44,000) = 88,000/-. Considering the all aspects, according to the observation made above, it appears to me that the award passed by the Learned Tribunal is justified except the excess amount of award of Rs 88,000/-. So, in this case, the just and proper compensation would be (Rs. 13,07,000/- - 88,000/-)=12,19,000/-

22. Accordingly the instant appeal and the cross-appeal being COT 21 of 2024 is disposed of on the above observations. The Insurance Company has already deposited the sum of Rs. 19,89,203/- vide OD Chalan No. 3222 dated 02.01.2024. The Office of the Learned Registrar General High Court, Calcutta is directed to disburse the amount of Rs. -- (19,89,103/ - 88,000/-)=19,01,103 to the claimants equally within 04 weeks.

23. Payment of compensation is subject to ascertainment of payment of deficit court fees, if any.

24. Some amount lying in the account, be returned to the Insurance Company on usual terms.

25. CAN 2 of 2024 is filed for amendment of the name of the present respondent No. 1 on hearing the Learned Advocate and on perusing the Aadhaar Card of the respondent No. 1 the name of the respondent is No. 1 is corrected as “Rajeswari Nayek”.

26. CAN 2 is disposed of.

27. The appellant to correct the memo of the cause title of the appeal accordingly.

28. FMA 6 along with COT 21 of 2024 is disposed of.

29. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)