IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

05.03.2024
SL No.9
Court No. 551
Ali

F.M.A. 121 of 2021

The Oriental Insurance Co. Ltd.
Versus
Papiya Bibi & Ors.

Mr. P.K. Pahari
…for the appellant/Insurance Co.

Mr. J.K. Mondal
…for the respondents/claimants.

The instant appeal has been preferred against the judgment and award dated 31st July, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, FTC, Suri, Birbhum, in MAC Case No. 182 of 2017.

The brief facts of the case is that the present respondent Nos. 1 and 2 being the claimants have preferred an application under Section 166 of M.V. Act before the learned tribunal for getting compensation 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 case was contested by the Insurance Company by filling written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 19,86,019/- together with interest @ 6%

per annum as compensation of this case and directed the Insurance Company to pay the compensation.

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

Learned advocate, Mr. Pahari, appearing on behalf of the appellant/Insurance Company submits that the award passed by the learned tribunal is erroneous. Learned tribunal has assessed the monthly income of the deceased to be Rs. 8,945/- there is no evidence to establish the income and avocation of the deceased. The claimants have failed to adduce the evidence of employer or salary certificate to prove the income of the deceased. The learned tribunal has only based upon some bank statements and observed that the deceased used to earn Rs. 8,945/- per month. He further argued that to prove the income and avocation of the deceased the claimants should have produced the employer or the salary certificate, but in this case, no such employer or salary certificate was produced. Thus, the observation of the learned tribunal is erroneous.

Learned advocate Mr. Mondal appearing on behalf of the claimants/respondent Nos. 1 and 2 submit that the award passed by the learned tribunal is not erroneous. The deceased was an employee of Navyog Minerals Aggregates Ltd. The claimants have produced the bank statement of a Savings bank account of Central Bank of India standing in the name of the deceased. The bank statement shows that for every month a particular amount was credited in the account of the deceased from the Navyog Minerals Aggregates Ltd. The bank statement was duly proved by the Manager of the said bank. The income from the Navyog Minerals Aggregates Ltd. directly to the bank account of the deceased can be easily considered to be a monthly income of the deceased. He further argued that the PW-1 i.e. the widow of the deceased as well as PW-3. The mother of the deceased has deposed that the deceased was an employee of Navyog Minerals Aggregates Ltd. The Insurance Company has not produced a single witness to disprove the oral witness as well as the value of documentary evidences i.e. the bank statement as proved by the claimants. So, in this case, the observation of the learned tribunal regarding the monthly income of the deceased from the employer i.e. Navyog Minerals Aggregates Ltd. is very much correct.

In support of his contentions, he cited a decision of Hon'ble Apex Court reported in ***B. Sangeetha & Anr. Versus OMR Travel Access Pvt. Ltd. & Anr. 2020 (Civ) 1095***

> ***"7. Since the bank statements and the certificates were duly proved and marked, there was no reason or***

justification for discarding the salary certificate for the month of May 2012, which indicates that the net pay of the deceased was Rs. 23,419/-. This is for the period proximate to the accident. The compensation awarded by the High Court must hence be enhanced in accordance with the legal principles which emerge from the decisions of this Court. the compensation payable to the appellants is recomputed as follows:".

To strengthen his argument regarding value of oral evidence of the claimants he cited a decision of Division Bench passed in ***Sri Kesto Saha Versus The New India Aswsurance Co. Ltd. & Anr.*** reported in ***2002 WBLR (Cal) 808***

"42. It is true, that irrespective of any admission by non traverse, the Tribunal can in its discretion, embark upon an enquiry into the veracity of the assertions made by a claimant. However, in doing so, the Tribunals are not expected to insist on strict proof.

46. The respondents did not adduce any evidence whatsoever, either oral or documentary, to contradict the claim of the Appellant with regard to his age, occupation and income. The oral evidence adduced by the Appellant with regard to his age, occupation and income was not challenged by cross examination. The witnesses who deposed on behalf of the Appellant including the Appellant

> ***and his mother were not confronted by the Respondent No. 1 with any specific case. A suggestion to the witness, which is denied, is no evidence. The oral evidence of the Appellant's witnesses with regard to the age, occupation and income of the Appellant is deemed to have been admitted by the Respondents".***

Heard the learned advocates perused the evidences on record, it is the case of the claimants that the deceased was an employee of Navyog Minerals Aggregates Ltd. and wherefrom it has been stated by the claimants that the deceased used to earn Rs. 10,000/-per month which was credited in the Central Bank of India, Sainthia Branch. No employer was produced before the learned tribunal, neither a salary certificate, nor pay slips were also produced. Only the bank statement of the deceased was produced; the bank Manager deposed that sum credited was made directly through NEFT from the Navyog Minerals Aggregates Ltd. to the account of the deceased. The learned tribunal has observed that the bank statement i.e. the exhibits 8 and 9 series disclosed that the deceased had received some amount from the Navyog Minerals Aggregates Ltd. in every month.

Considering the situation, the learned tribunal is of view that this must be the salary of the deceased. The salary of the deceased was stated by the claimants to be Rs. 10,000/-per month. The Bank statement does not reflect such amount (Rs.10,000/-). In exhibits 8 and 9, some amount more that Rs. 8,000/- was credited in some month and also for some other months, less than Rs. 8,000/- was also credited; in the month of December, 2015 more than Rs. 9.000/- was credited again in the month of April 2016 only more than Rs. 5,000/- was credited. So nature of credit to the saving bank accounts of the deceased is not similar in every month, thus the credit cannot be said to be the salary of a deceased. From the FIR it reveals that the widow of the deceased stated that her husband was engaged under the Ombuja Company. But, the claim case was stated that the deceased was employed under the Navyog Minerals Aggregates Ltd. During the evidence of PW-3 i.e. the mother of the deceased, stated that she produced some documents relating to the employment of the deceased at Navyog Minerals Aggregates Ltd. but no such document was found in the LCR though it has been written in the evidence that they are marked X and Y for identification. So, it is clear from the evidence on record that nothing documentary evidenced was produced regarding the income and avocation of the deceased only the oral evidence of the claimants and the bank statement was produced. The bank statement does not shows the regular payment of a regular employee. Thus, I am of the view that in this case, the claimants have failed to prove the income and avocation of the deceased in a proper manner.

It is a case under Section 166 of M.V. Act; in this case, the claimants are only required to prove on the touchstone of preponderance of probabilities.

Considering the entire aspects, I am of the view that the claimants has failed to adduce single evidence regarding the income of the deceased. Thus, stretching the notion of probabilities it is not possible for this appellate Court to hold that the deceased was an employee under the Navyog Minerals Aggregates Ltd. However, considering the bank statement of the deceased it can be said deceased was earning member of the family. So, in this case the notional income of the deceased can be considered to be Rs. 6,500/- per month. on that score the award passed by the learned tribunal requires modification.

Mr. Pahari further submits that the deduction towards personal expenses of the deceased was taken to be $1/4^{th}$. The claimants are only two in number and the award was allowed in favour of three persons i.e. widow, minor daughter and mother of the deceased. So, in this case, there are three dependents of the deceased. Thus, the deduction would be $1/4^{th}$ instead of $1/3^{rd}$.

Mr. Mondal submits that according to the Mohammedan Law the father is also a legal heir of the deceased and he is also dependent according to the evidence of PW-3. So, in this case, the deduction towards the personal expenses of the deceased would be $1/4^{th}$.

Considering the submission of the learned advocates and considering the materials on record, I am of the view that in this case the claim petition was filed by widow and minor daughter of the deceased. The mother and father of the deceased are alive, they are made proforma respondents. In this case, it further evident that they contested the matter before the learned tribunal by adducing evidences. So considering the matter and considering the Mohammedan Personal Law it appears to me that the mother, father, daughter and widow are the dependents of the deceased. So, in this case, the deduction towards the personal expenses of the deceased would be correctly $1/4^{th}$.

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

Accordingly, the just and proper compensation of this case assessed as hereunder:-

<u>Calculation of compensation</u>

1.	Monthly Income	:Rs. 6,500/-
2.	Annual Income (Rs.6,500/- X 12)	:Rs.78,000/-

3. Add: Future Prospects @ 40% :Rs.31,200/-
:Rs.1,09,200/-

4. Less: 1/4th deduction :Rs.81,900/-
(Rs.1,09,200/--Rs.27,300/-)

5. Multiplier 17 :Rs.13,92,300/-
(Rs.81,900/- X 17)

6. Add: General damages :Rs.70,000/-
:Rs. 14,62,300/-

After calculation the award comes to Rs. 14,62,300/-. The award shall carry interest @ 6% per annum from the date of the filing of the claim application till its actual realization. It appears that the Insurance Company has already deposited the amount of Rs. 22,26,627/- through the office of the learned Registrar General, High Court Calcutta. The office of the learned Registrar General, High Court, Calcutta is directed to calculate the instant award and disburse the same in the name of the claimants according to the ratio as mentioned by the learned tribunal within four weeks. The residue in the account may be refunded to the Insurance company on usual terms and conditions. The payment of compensation is 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.

Let the LCR be sent down immediately to the learned tribunal.

The instant **FMA 121 of 2021** 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.)