07.03. 2024
Item No.19
n.b.
Ct. no. 551

FMA 920 of 2023

With

IA No. CAN 1 of 2023

National Insurance Co. Ltd.
Vs.
Sudesna Purkait & ors.

Mr. Rejesh Singh
.....for the appellant.
Mr. Subhankar Mondal
..... for the respondent

The instant appeal has been preferred against the judgment and award dated November 11, 2021 passed by the learned Judge Motor Accident Claims Tribunal Cum Additional District Judge, Fast Track II Court, 7th Court, Diamond Harbour, South 24 Parganas, in M.A.C. case No. 407of 2022.

The brief fact of the case is that the present respondent nos.1 to 4 have filed an application under Section 166 of the M.V. Act before the learned Tribunal 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 case was contested by the Insurance Company by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded sum of

Rs.47,26,000/- towards the compensation and directed the Insurance Company to pay the compensation

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

Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal is not proper, the award is excessive. He summits that the income as calculated by the learned Tribunal is erroneous. The tax componant was not deducted form the income of the decease, so the actual income of the deceased in this case would be (Rs.21,000-Rs.130)=Rs.20,870/-. It is further argument of Mr. Singh that the learned Tribunal has added future prospect which is 50% to the established income of the deceased. He submits that the deceased was not a permanent employee, he was an employee of a private limited company; there is no evidence in the record to hold that the deceased was a permanent employee. So, in this case, future prospect would be 40% considering the observation of the Hon'ble Supreme Court passed in **National Insurance Co. Ltd. Vs. Pranay Shetti.** He further submits that the number of claimants in this case are four(4). The claimant no.2 is the father of the decease. The father is not entitled to get the share of compensation as the widow, minor son as well as the mother is alive.

So, in this case, the deduction towards the personal living expensing of the deceased would be 1/3rd instead of 1/4th.

Mr. Singh further submits that the consortium was awarded by the learned Tribunal towards the widow of the deceased as well as towards the parental consortium and consortium towards the minor son. According to the observation of Hon'ble Supreme Court in **Pranay Shetti(supra)** wife is only entitled to get the consortium. So, in this case, the learned Tribunal has awarded Rs.1,20,000/- more towards the consortium. Mr. Singh further submits that considering the entire materials and considering the factors, the award passed by the learned Tribunal requires modification.

Mr. Mondal, learned advocate on behalf of the claimant submits that the award passed by the learned Tribunal suffers no illegality. The learned Tribunal has considered the entire facts and circumstances of the case and after considering the pay slips and other materials on record he was awarded the compensation. So, the award cannot be modified.

Heard the learned advocates and perused the materials on record. In considering the income of the deceased, it appears that the occupation of the deceased was stated to be "service". The name of the employer was stated to be "White Stone Pvt. Ltd". The necessary documents of White Stone Pvt. Ltd was produced; the pay slips of the deceased was marked as exhibit. From the pay slip for the month of May 22, it appears that the days work for the said month was stated to be 26. So, it appears that from the pay slips that the nature of employment of the deceased was not permanent job. He was in a fixed salary under his employment. It further appears that the total earning was calculated to be Rs.21,000/- wherefrom the total deduction was Rs.2052/-. From the deduction, it appears that the professional tax was deducted as Rs.130. The tax component is only to be deducted to calculate just and proper income of the deceased. So, in this case, the monthly earning of the deceased should be Rs.20,000-Rs.130=Rs.19,870/-. As the deceased was not a permanent employee but he was engaged in a fixed salary; so, future prospect in this case would be 40%.

It appears from the claim application that, the number of claimants are four(4) Para 19 of the claim application explain the relationship of the claimants with the deceased. Wherefrom it appears that the claimant no.1 is the widow, claimant no.2 is father, claimant no.3 is mother and claimant no.4 is the minor son of the deceased. It appears that the claimant no.2 being the father is not entitled to get the compensation as he is not the legal heir a dependent upon the income of the deceased, when the mother and widow of minor son is living.

Considering the same, in this case the number of dependents are 3, so the deduction towards personal and living expenses would be1/3rd instead of 1/4th. It further appears from the body of the impugned judgment that the learned Tribunal has awarded consortium to the tune of Rs.40,000/- towards the widow of the deceased and also awarded further Rs.80,000/- in favour of the parents of the deceased and further Rs. 40,000/-towards the minor son of the deceased. As per observation of the Hon'ble Supreme Court in **Pranay Shetti(supra)** the wife i.e widow of the deceased is only entitled to get consortium amounting to Rs.40,000/-. So, in this case, the learned Tribunal has awarded more amount towards the consortium i.e. Rs.1,20,000/-. It further appears that learned Tribunal has passed the award in the year 2023. The Hon'ble Supreme Court in **Pranay Shetti(supra)** has observed that the general damages shall be enhanced Rs.10% after every three years. So, in this case, the claimants are entitled to get the 10% upon the general damages. Considering the aspect, the award passed by the learned Tribunal required modification. The total income is recusted below:

1. Monthly income	: Rs.20,870/-
2. Annual income	: Rs.2,50,440/-
3. 1/3rd deduction	: Rs.1,66,960/-
4. Add 40% future prospect	: Rs.66,784/-
	: Rs.2,33,744/-
5. Multiplier 16 (2,33,744 X 16)	: Rs.37,39,904/-

6. General Damages Rs.77,000/- : Rs.77,000
Total : Rs.38,16,904/-

After calculation, the award comes to Rs.39,16,904/-

The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application i.e. 17.8.2022 till its actual payment.

It further appears that the Insurance Company has deposited the statutory deposit of Rs.25,000/- on 9.10.2023 and thereafter an amount of Rs.47,79,026/- on 8.11.2023 and again Rs.2,52,890/- on 18.12.2023. So, the Insurance Company has deposited the total amount of Rs.50,56,916/- through the office of the learned Registrar General, High Court Calcutta which must have carried interest.

The office of the learned Registrar General, High Court Calcutta is directed to calculate the instant award together with interest and disburse the same to the claimants no.1,3 and 4 equally within six weeks. Residue in the account shall be refunded to the Insurance Company along with accrued interest on usual application. The payment of compensation is subject to ascertainment of payment 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.

The office is further directed to sent back the LCR at once.

Accordingly, FMA 920 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.)