23.02.2023
Ct. No.551
Sl. No.4 & 5
(PP)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 966 of 2023
with
IA No. CAN 2 of 2024

National Insurance Company Ltd.
Vs.
Mousumi Maji & Ors.

With

COT 22 OF 2024

Mousumi Maji & Anr.
Vs.
National Insurance Company Ltd. & Anr.

Mr. Deb Narayan Ray
… For the appellant/Insurance Company.

Mr. Amit Ranjan Roy
… For the respondent no.2/claimants.

The instant appeal has been preferred against the judgment and award dated 13th July, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Medinipur, in MAC Case No.490 of 2021. The claimants/respondent nos.1 and 2 preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act, 1988 for getting compensation as their predecessor died in a road traffic accident due to rash and negligent driving of the driver of offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company by filing written statement. Learned Tribunal after hearing the parties and after receiving evidences has awarded a sum of Rs.29,91,000/- in favour of the claimants and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award, the Insurance Company has preferred the instant appeal. The claimants also preferred one cross appeal against the impugned award. Both the appeal and the cross appeal are taken up for uniformity of the judgment.

Mr. Deb Narayan Ray, learned advocate appearing on behalf of the Insurance Company submits that the impugned award passed by the learned Tribunal is required to be set aside. He argued that the learned Tribunal has assessed the monthly income of the deceased erroneously. The learned Tribunal did not consider the evidences on record and assessed the income of the deceased to be Rs.20,500/- per month. He argued that the deceased was not a permanent employee and he was only paid by the company on the basis of daily wages. So, his monthly income cannot be calculated to be Rs.20,500/-.

He further argued that the learned Tribunal also failed to appreciate the fact that the FIR of the instant case was lodged after 4 months of the alleged accident. He argued that the alleged accident happened on 14th March, 2021, but the FIR was lodged on 5th July, 2021. He submits that there are no explanation in such inordinate delay in lodging FIR. He argued that the present offending vehicle must have implanted due to such delay in lodging the FIR.

Mr. Deb Narayan Ray, learned advocate further argued that the driver of the offending vehicle had no authority or proper driving licence to drive the vehicle. He submits that the owner of the offending vehicle have never allowed the driver of the offending vehicle to drive the said motor cycle. In that score, the owner has violated the terms of the policy. So, the Insurance Company is not liable to pay the compensation.

Mr. Amit Ranjan Roy, learned advocate appearing for the respondent nos.1 and 2/claimants submits that the claimants have produced one employer before the learned Tribunal as P.W.3. During his evidence, he has produced all the registers of wages wherefrom it would appear that the deceased Debkumar Maji was a permanent employee and used to earn more than Rs.21,000/- per month. He further argued that the deduction and perks accepted by the deceased during his employment can be taken to be the monthly income of the deceased according to the observation of the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Indira Srivastava & Ors.** reported in **2008 0 AIR (SC) 845**. He further argued that the monthly deduction in the payment register appears that they are regularly deducted from the gross income of the deceased; amongst them the deduction towards the provident fund need not to be deducted.

Mr. Roy, further argued that there is no delay in lodging the FIR. The accident happened during the Covid pandemic. After such accident, the widow was engaged during last rituals of her husband and he lodged a written complaint to the concerned police station as well as to the SP, Purba Medinipur just after completion of the ritual; but these applications were not taken care of, for which she preferred an application before the learned Chief Judicial Magistrate, Purba Medinipur. Thereafter, by virtue of the order of the learned Chief Judicial Magistrate, Purba Medinipur, the instant case was registered. He further argued that just after the accident, the dead body of the deceased was carried by a police constable and post mortem was done. From the post-mortem report it would reveal one UD Case, being No.127 of 2021 dated 14th March, 2021 was registered due to the death of the deceased. The number of the UD case is reflected in the post-mortem report. On such submission, Mr. Ray submits that there is no doubt in such accident.

He further pointed out the observation of the learned Tribunal in the impugned award regarding the delay in lodging of FIR.

Mr. Roy further argued that the present deceased was the permanent employee, but the learned Tribunal has committed error by awarding only 25% of his established income towards the future prospect. As he was a permanent employee according to the observation of the Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680,** the future prospect would be 30% to the established income. So, he prayed for just and proper compensation.

Heard the learned advocates and perused the materials on record.

In considering the first ground of appeal regarding the income of the deceased, it appears that the learned Tribunal has adopted the income of the deceased to be Rs.20,500/- per month. Learned Tribunal has opined that the manager of the employer has appeared as P.W.3 and he produced Exhibits 9 and 10. It appears that the learned Tribunal has adopted the gross actual wages paid to the deceased for the months. Though the gross wages was payable to the deceased was more than Rs.21,000/-, but after deduction the learned Tribunal thinks it fit that the monthly income would be Rs.20,500/-

Mr. Roy submits that an amount of Rs.1,140/- was deducted towards provident fund account, but no such break up or explanation was produced before the learned Tribunal.

Thus, I find no substance in the submission of the Mr. Ray, learned advocate appearing on behalf of the respondent nos.1 and 2.

Considering the same and also considering the observation of the learned Tribunal, it appears to me that the learned Tribunal has correctly assessed the monthly income of the deceased in this case.

It further appears that the FIR was lodged after more than 3 months of the alleged accident. The materials go to show that the widow of the victim lodged a petition of complaint under Section 156(3) of Cr. P. C. before the learned Chief Judicial Magistrate. Thereafter, the case was registered by virtue of direction of the learned Chief Judicial Magistrate concerned. The body of the application under 156(3) contains the statement that the widow has approached the police authorities before initiation of such application.

I find no justification to entertain the finding of the learned Tribunal in that score. The learned Tribunal has correctly adopted the view that the accident happened during the pandemic period and the evidence goes to show that the police has brought the body to the hospital as well as the morgue. So, there exists hardly any doubt regarding such accident. I find justification in the observation of the learned Tribunal.

In considering the submissions of the learned advocate for the Insurance Company that the driver of the offending vehicle had no valid authority to drive the offending vehicle, it appears that the police has seized the offending vehicle that is Hero Honda Motor Cycle, bearing registration no. WB-30N-9258. The owner of the offending vehicle has appeared before the police authorities and produced all documents. No evidence was produced by the Insurance Company to substantiate the plea of absence of any authorisation letter from the owner.

Considering the same, I find no justification to entertain the submission of the learned advocate appearing on behalf of the Insurance Company. However, it appears that the Hon'ble Apex Court in **Pranay Sethi** (supra) has observed that the future prospect would be awarded in favour of the claimants under Section 166 of the M. V. Act and where the deceased had permanent job and age is between 40 and 50 years, the future prospect would be 30% of actual salary income of the deceased, but when the deceased was self-employed or in a fixed salary, the future prospect would be 25%.

In this particular case, the P.W.3 appeared and submitted the registers. From the registers it appear that the deceased was not a self-employed or in a fixed salary, but it is true that he was in a permanent job.

Considering the same, in my view the observation of the learned Tribunal regarding fixing the future prospect is erroneous. It should be 30% to the **established** income.

However**,** the Hon'ble Supreme Court in **Pranay Sethi** (supra) has only allowed the consortium towards the widow of the deceased, but in this case the consortium was provided in favour of the two claimants according to the law laid down by the Supreme Court in **Pranay Sethi** (supra), it is not permissible. In this case, the claimants are only entitled to get Rs.44,000/- towards the consortium.

For the above observation, award passed by the learned Tribunal requires modification.

Accordingly, I modify the compensation as follows:-

Monthly Income	Rs. 20,500/-
Annual Income (Rs.20,500 x 12)	Rs. 2,46,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 82,000/-
	Rs. 1,64,000/-
Add: Future prospect 30%	Rs. 49,200/-
	Rs. 2,13,200/-
Multiplier 14 (Rs.2,13,200/- x 14)	X 14
	Rs.29,84,800/-
Add: General Damages	Rs. 77,000/-
Total	Rs.30,61,800/-
Less – Awarded by ld. Tribunal	Rs.29,91,000/-
ENHANCEMENT	Rs. 70,800/-

After calculation the award comes to Rs.30,61,800. The learned Tribunal has already awarded a sum of Rs.29,91,000/-. So the balance award comes to Rs.70,800/-.

The Insurance Company is directed to pay the balance awarded sum along with 6% interest per annum from the date of filing of the claim application, i.e. 26-08-2021 through the office of the Learned Registrar General, High Court, Calcutta within 6 weeks from date.

It appears that the Insurance Company has already deposited the earlier awarded sum. The said sum must have carried some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to disburse the amount in favour of the claimants within 4 weeks along with accrued interest according to the usual norms.

After the deposit being made by the Insurance Company in respect of the balance award along with interest, the claimants/respondents are also entitled to get the sum according to the general norms.

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 the order to receive the deficit court fees, if any.

With the above observation, the appeal, being FMA 966 of 2023 along with COT 22 of 2024 and connected application, being CAN 2 of 2024, are disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)