IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMAT (MV) 42 of 2024

Sarathi Barman
Vs.
Reliance General Insurance Company Ltd. & Anr.

For the Appellant	:	Mr. Gobinda Saha Mr. Tamal kr. Sen Mr. Milan Ch. Laskar Ms. Priyanka Dey Mr. Sanghai Chowdhury
For the Insurance Co. Ltd.	:	Mr. Partha Bhowmick
Heard on	:	19.08.2023
Judgment on	:	23.08.2024

Ajoy Kumar Mukherjee, J.

1. This appeal has been preferred at the instance of the claimants against the judgment and award dated 2nd April, 2024 passed by Motor Accident claim tribunal 2nd Court Jalpaiguri in MAC Case no. 374 of 2017.

2. The judgment impugned has been attacked by the claimant *interalia* on the following grounds

I. For that the learned Tribunal judge was wrong in assessing the monthly income of the victim/deceased as Rs. 5,000/- as notional income instead and in place of Rs. 9,000/-, which might be considered from the oral evidence of PW1 and following the decision of this High Court in the case of **Sulekha Mandal (Adhikary) & Others, Vs. Royal Sundaram General Insurance Co. Ltd. on 02 May, 2019 and R. Ravi Vs. The United India Insurance Company Limited arising out of SLP (C) No-9026/2020 on 06.04.2024** and as such the impugned award is bad in law and the same is liable to be modified and enhanced.

II. For that the Learned Tribunal judge erred in law and fact in awarding the interest @6% per annum instead and in place of @9% per annum over the assessed compensation from the date of filing of the claim application.

3. Before I deal with the issues that arises for consideration, let me first deal with the factual matrix out of which the aforesaid issues have arisen. The appellant/claimant being the mother of the victim deceased made the claim application contending that victim Mithu Barman was aged about 21 years having earning of Rs. 9,000/- per month at the time of his death. On 01.10.2017 the victim deceased met the Accident caused by offending vehicle bearing registration No. WB 74-AQ-8778. Said accident was reported to the police station and Mekhliganj police Station case no. 276 of 2017 dated 05.10.2017 was started. During the course of trial the claimants have brought two witnesses who deposed in support of his case and the documents filed by the witnesses are marked exhibit. On the other hand the opposite party insurance company had only contested the said claim by filing written statement but they did not bring any witness during trial.

4. From the judgment impugned it is clear that it was submitted before the court below that the victim was a seasonal vegetable seller though no documents was produced in support of said contention. In ***Mehmooda Bee and others Vs. National Insurance Co. Ltd.*** reported in **2023 ACJ 329,** case, the victim was aged about 34 years and was working as a tailor and considering the factual background and work/profession of the deceased, Hon'ble Court held that his notional income should be taken as Rs. 5,000/- per month. In another judgment reported in ***2023 ACJ 2386 (Laxmi Devi and others Vs. Mehboob Ali and others)*** the Apex Court held in a case where the victim was not an unskilled worker but was doing business in bangles held that notional income should be Rs. 6,000/- per month reckoning an income of Rs. 200/- per day.

5. Though learned counsel on behalf of the claimants have heavily relied upon the judgment of Royal ***Sunderam Alliance Insurance Co. Ltd. Vs. Sulekha Mandal (Adhikary) and others*** reported in **2019 (3) TAC 68 (Cal)** contending that in the said case this court held that the notional income should be fixed at Rs. 9,000/- per month. The ratio laid down in the said case is factually distinguishable from the present case, since the victim of the said case was a good skilled quack Doctor in allopathy system of medicine and his training was completed under doctor B.L. Bishayi and the said doctor adduced evidence as witness no.3 for the claimant who stated that deceased had income of Rs. 10,000/- per month at the time of accident which has been duly proved in evidence.

6. In view of aforesaid discussion and also considering the fact that the victim was an unskilled person and was engaged in seasonal vegetable selling business I find that the court below has not committed any mistake in assessing monthly income of the deceased as Rs. 5,000/- per month.

7. Now so far as the second ground of attack made by the appellant herein it appears from the operative part of the judgment that the court below has awarded 6% interest per annum upon the compensation amount from the date of filing of the claim application. However, petitioner's contention is that the court below ought to have awarded interest at the rate of 9% per annum.

8. Now let me see whether the tribunal was justified in awarding 6% per annum interest upon the compensation amount from the date of filling of the application. Under section 171 of the Act of 1988 it is clear that where the claim of compensation has been allowed under the act of 1988 the tribunal may direct that in addition to the amount of compensation simple, interest shall also be paid at such rate from such date not earlier than the date of making claim.

9. In **National Insurance Company Limited Vs. Keshab bahadur** reported in **2004 2 SCC 370** it was held that even though the expression "may" is used a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case and it was clearly held in the said judgment that the provision of payment of interest is discretionary and is not and cannot be bound by rules. In section 171 no rate of interest is fixed and the duty has been bestowed upon the court to determine such rate of interest.

10. In the case of **Abati Bezbaruah Vs. Deputy Director General Geological survey of India and another** reported in (**2003) 3 SCC 148** it was held that the question as to what should be the rate of interest in the opinion of the tribunal would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. In the present case the accident took place in the month of September, 2017. Considering the average fixed deposit bank interest rate prevailing from 2017-2018 onwards I find no fault in Tribunal's observation that the claimants are entitled to get 6% simple interest on the compensation amount.

11. In view of aforesaid discussion I find that the judgment impugned does not suffer from any illegality or infirmity, for which the interference by this court is warranted.

12. Thus **FMAT (MV) 42 of 2024** stands dismissed without any cost.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)