CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE

04.04.2024
SL No.57
Court No. 3
Ali

FMA 32 of 2023

Khukibala Das & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Gobinda Saha, Adv.,
Mr. Tamal Kr. Sen, Adv.,
Ms. P. Dey, Adv.
………. for the appellants/claimants.

Mr. Rishin Chakraborty, Adv.,
…for the respondent/Insurance Co..

The instant appeal has been preferred against the Judgment and Award dated 17th August, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 3rd (Special) Court, Jalpaiguri, in MAC Case no. 264 of 2021.

The brief facts of the case is that the present appellant being the claimants have preferred an application under Section 166 of the 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 filing written statement.

Considering the submission of the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.3,07,600/- towards compensation 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 claimants.

The learned advocate for the claimants submits that the impugned award passed by the learned tribunal is erroneous and the amount of compensation calculated by the learned tribunal is not correct and justified in the attending facts and circumstances of this case.

Heard the learned advocates, after hearing the points for preferring the appeal is set out as follows:-

1) Income
2) Future prospects
3) Deduction towards personal living expenses, and,
4) Interest.

Income

It appears that the claimants submitted that the deceased was a seasonal businessman and used to earn Rs. 12,000/-per month. No evidences were adduced either orally and documentary to substantiate the income and occupation of the deceased, consequently the learned tribunal has adopted the notional income to be Rs. 3,300/- per month. Learned advocate for the appellants submits that the notional income of the deceased should not be fixed as Rs. 3,300/- per month. He submits that the deceased died on 14th March, 2021 so, the notional income has to be at least Rs.6,000/- per month.

In support of his contentions, he cited a decision of Hon'ble Supreme Court report in ***General Insurance Co. Vs. Nanu Ram 2018 (4) T.A.C. 345 (S.C.);*** by citing observation of Hon'ble Supreme Court. He submits that in case of the deceased aged about 24 years old the notional income was calculated to be Rs. 6,000/- per month.

Learned advocate appearing on behalf of the Insurance Company submits that the observation of the learned tribunal is very much correct. No evidence was adduced on behalf of the claimants to prove the income and occupation. However, the observation of ***Nanu Ram (Supra)*** is not applicable in this case.

Heard the learned advocate perused the materials on record also perused the observation of Hon'ble Supreme Court in ***Nanu Ram (supra).***

In this case of ***Nanu Ram*** the High Court has fixed the income of the deceased according to the Minimum Wages Act of the State of Haryana.

Considering the facts and circumstances, and particularly in considering the age of the deceased the Hon'ble Apex Court has fixed the notional income as Rs. 6,000/- per month.

It has been several times ordered by this Court in deciding the claim appeals that when there is no specific income proof document either orally and documentary before the learned tribunal; the notional income of a deceased who died prior to the year 2010 would be Rs. 3,000/- when he died from the year 2011-2014 the notional income would be Rs. 4,000/- and when a deceased died after year 2015 the notional income would be Rs.5,000/-. The said view was adopted by this Court in several occasions. Accordingly, the same principle may be applied in this case. So, considering the facts and circumstances and the age of the victim, I think it necessary that in this case the notional income would be Rs. 5,000/-per month.

Future prospects

It appears that the learned tribunal has not awarded no compensation towards the future prospects. According to the observation of Hon'ble Supreme Court passed in ***National Insurance Company Vs. Pranay Sethi*** in claim applications filed under Section 1``66 of M.V. Act, the learned tribunal must consider the future prospects which would be the specific percentage in respect of age of the deceased. In this case the age of the deceased is within the age group of 56-60 years. The learned advocate for the Insurance Company submits that the age of the deceased was not properly proved the actual age of the deceased is more than 60 years, thus no future prospects may be awarded by the tribunal.

Heard the learned advocate for the Insurance Company it appears that the postmortem report discloses the age of the deceased to be 60 years. The learned tribunal had adopted the multiplier 9 fixing the age of the deceased within the age group of 60-65 years. Thus, I find no justification in the argument on behalf of the Insurance Co. In this case the applicable future prospects would be 10% which would be added to the establish income of the deceased.

Deduction towards the personal living expenses

According to the observation of Hon'ble Supreme Court in ***Sarla Verma*** followed by ***Pranay Sethi (supra)*** the deduction towards the personal living expenses would be 1/3 when there are number of dependents 3 in this case the number of dependents are 5 so the deduction towards personal living expenses would be 1/4th.

Interest

It appears that the learned tribunal has not awarded any interest along with compensation. By virtue of provision of Section 171 of the Motor Vehicles Act the compensation awarded under the Motor Vehicles Act must have coupled with a simple interest.

Learned advocate for the Insurance Company submits this is not a directive upon the tribunal to pass an order upon interest.

Heard the learned advocate; time and again and it has been observed the Hon'ble Supreme Court in several occasions that the compensation must have been ordered along with interest. However, it further appears to me that M.V. Act is the beneficial legislation thus; the each and every compensation passed by the learned tribunal must have carry an interest. In my view the just and proper compensation of this case must have carry @ 6% interest per annum from the date of filing of the claim application.

Considering the observations the award passed by the learned tribunal need be modified.

Calculation of compensation

1. Monthly Income……………… …….. :Rs. 5,000/-
2. Yearly Income………… :Rs.60,000/-
3. Less:1/4th deduction towards personal and living expenses :Rs.15,000/-

		:Rs. 45,000/-
4.	Add: 10% Future Prospects	:Rs. 4,500/-
		:Rs.49,500/-
5.	Multiplier 9 (Rs.49,500/- X 9)	:Rs.4,45,500/-
6.	Add: General Damages	:Rs70,000/-
		:Rs.5,15,500/-

Less: Tribunal awarded.......Rs. 3,07,600/-

Enhance Compensation......Rs. 2,07,900/-

After calculation, the balance compensation comes to Rs. 2,07,900/-. Insurance Company is directed to pay the balance amount together with interest @ 6% per annum from the date of filing of the claim application i.e. from 29.05.2021 till payment within six weeks. The insurance company is further directed to pay the compensation through the office of the learned tribunal vide equally five account payee cheques in the name of the claimants. On such deposit, the claimants are at liberty to receive the same according to the general norms after satisfaction of identity and certification subject to the 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.

The instant FMA 32 of 2023 is disposed of.

All connected pending 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.)