IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Civil Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Ajoy Kumar Mukherjee

FMAT (MV) 8 of 2024

Dhanbala @ Dhanabala Sen & Ors.
Versus
National Insurance Company Ltd. & Anr.

With

FMAT (MV) 65 of 2023
National Insurance Company Ltd. & Anr.
Versus
Dhanala @Dhanabala Sen & Ors.

For the Appellants in FMAT(MV)/8 of 2024 and for the Respondents in FMAT(MV)/65 of 2023	**: Mr. Tamal Kumar Sen** **Mr. Milan Kr. Laskar**
For the Respondent (Insurance Co.) in FMAT(MV)/8 of 2024 and for the Appellant in FMAT(MV)/65/2023	**: Ms. Supriya Singh**
Heard on	**: 10.07.2024**
Judgment on	**: 25.07.2024**

Ajoy Kumar Mukherjee , J.:

1. Being aggrieved by the judgment passed by Motor Accident Claim Tribunal, Jalpaiguri dated 22nd August, 2023 in MSC. Case No. 339 of 2019, both claimants and the insurance company have preferred separate miscellaneous appeals before this Court. The appeal preferred by the claimants is FMAT (MV) No. 08 of 2024 and the appeal preferred by the Insurance Company is FMAT (MV) No. 65 of 2023.

2. The appellant/claimant in FMAT(MV) Case No. 8 of 2024 have prayed in the appeal for further enhancement of compensation on the ground that the Tribunal was wrong in assessing the monthly income of the victim deceased at Rs. 6,000/- as notional income but he ought to have assessed the monthly income of the victim as Rs. 9,000/- per month. The other ground for enhancement is that the Tribunal was erred in law in awarding only 6% interest per annum instead of 9% per annum over the assessed compensation, from the date of filing of the claim application.

3. Insurance company on the contrary has preferred appeal against selfsame judgment being FMAT (MV) No. 65 of 2023 with a prayer for direction of "Pay and Recovery" order on the ground that learned Tribunal did not consider that at the time of alleged accident, the vehicle involved did not have a valid permit which tantamount to violation of the mandatory terms and conditions of the insurance policy as well as the Motor Vehicles Act, 1988. The other ground of appeal by the insurance company is that the witnesses particularly claimant's witness no. 2 namely, Migen Sen, claimed himself to be an eyewitness of the alleged accident but he stated before the Tribunal that he appeared before the Court at the request of the complainant. Accordingly evidence of PW 2 is not trustworthy and as such claimants have failed to prove that the alleged offending vehicle has caused the accident. The said appellant also taken a ground in the appeal that the petitioner failed to submit any documents relating to deceased person's service/occupation and as such the claimants failed to prove the monthly income of the deceased. Accordingly he prayed that it would be appropriate to pass an order directing “Pay and Recovery” from the owner of the alleged vehicle which, if passed, will protect the interest of the insurance company.

4. On perusal of the judgment impugned it appears that the claimants herein have agitated before the Tribunal below that the deceased was a driver by profession and he used to earn Rs. 9,000/- per month at the time of his death. In order to substantiate the same the claimants also filed documents but the Tribunal below disbelieved their contention and relied upon the minimum rates of wages in schedule employments as issued by Labour Commissionerate, Govt. of West Bengal dated 1st July, 2014 and in absence of any clinching evidence and considering the day to day expenses, cost of living etc. he found nothing unusual in holding notional income of victim at Rs. 6,000/- per month, who also according to the Tribunal, was not in any permanent job and as such the annual income of the victim was assessed at Rs. 72,000/-.

5. During the course of trial the petitioners before the Tribunal filed and proved certified copy of FIR, written complaint, charge-sheet, two seizure lists, post mortem report, RC book of the offending vehicle, copy of insurance policy, copy of driving license of the accused driver, driving license of the victim and other relevant documents regarding victim’s identity and the identity of the petitioners.

6. The victim’s original driving license was seized during investigation as appearing from the seizure list and the counsel appearing on behalf of the claimant appellant submits that the number of the driving license clearly indicates that the deceased was a driver by profession. In fact he used to drive a pick up van bearing Registration No. WB 71-A-7405, which has been clearly mentioned in column 4 and 5 of the claim Application. Before the Tribunal the insurance company has not adduced any evidence to controvert the said contention that the victim was not a driver by profession. In the written statement they only averred that there is dispute in the occupation of the deceased Bapi Sen.

7. In ***R. Ravi vs. The United Indian Insurance Company Ltd*** it was held by the Apex Court on 26.04.2024 that taking into consideration the fact that the appellant was working as a driver, the daily income can be taken at Rs. 300/- per day and taking the same on a monthly basis it will come to Rs. 9,000/- per month.

8. Since in the present context prima facie it has been shown that the driving license of the victim was seized during investigation and there is nothing to show that the victim was engaged in any other profession to earn his livelihood, I find that the principle laid down by the Supreme Court in the said judgment is squarely applicable in the present context and as such the Tribunal below was not justified in holding notional income of the victim at Rs. 6,000/- per month. In such view of the matter the monthly income of the victim is assessed by this Court as Rs. 9,000/-. Accordingly the annual income of the victim comes down to Rs. 1,08,000/-.

9. It is not in dispute in the present context that at the time of death, the victim was only aged about 31 years. It was laid down in ***Pranay Shetty and others*** case, **(2017) 16 SCC 680** (paragraph 59) if the deceased was self-employed and below the age of 40 years, an addition of 40% of the established income shall be made towards future prospect. Taking the same into consideration the total income of the victim is calculated at Rs. 1,51,200/-. Now after deducting ¼ on account of personal living expenses of the victim the amount comes down to 1,13,400/-. Since the victim was aged about only 31 years at the time of death the multiplier would be 16 and after applying the multiplier the figure comes to Rs. 18,14,400/-. As per ***Pranay Shetty*** (supra), the general damage of Rs. 70,000/- (comprising of loss of estate, funeral expenses, loss of parental consortium) are to be added and accordingly the total amount of compensation comes down to Rs. 18,84,400/-.

10. Though the claimants have prayed for imposition of 9% interest upon the said amount from the date of filing of the application, but I do not find any substance in the said prayer in view of the fact that even in the aforesaid recent judgment delivered on 26th April, 2024 in ***R. Ravi vs. United Indian Insurance Company Ltd*** (Supra), the Supreme Court asked to pay interest at the rate of 6% per annum from the date of filing of the claim petition till the date of actual payment. As such I do not find any impropriety in the order whereby Tribunal fixed the interest rate to be paid by the Respondent.

11. Having considered the grounds of appeal taken by insurer/appellant in FMAT (MV) 65 of 2023, I find that the contention of the appellant is that at the time of alleged accident the vehicle involved, did not have a valid permit. From the judgment of the Tribunal I do not find that such issue was ever raised before the Tribunal nor any issue was framed for adjudication by the Tribunal. Nothing brought on record to show that without a valid permit the vehicle was running in a public place. No case has also been registered by police against offending vehicle for plying without valid permit. Insurance Company did not even taken any such specific plea in their written statement, nor any suggestion was put to witnesses of claimanant over the said issue during cross-examination. The Tribunal below in its judgment has also not made any observation to this context. Accordingly I do not find any substance in the said contention, which has been raised first time before the Appellate Court and parties did not get opportunity to adduce evidence.

12. Though the insurer appellant has taken another plea that PW 2 claimed himself as eyewitness in one hand and on the contrary he has also stated before the Tribunal that he appeared before the Court at the request of claimant so his evidence as eyewitness is not believable and that the FIR was registered 10 days after the alleged occurrence but in this context it is to be noted that the insurer/appellant had not brought any witness on their behalf. On the contrary since the PW-2 is not a summoned witness it appears from his deposition that he appeared before the Court at the request of the claimant. This does not ipso facto nullify the claim of the witness that he was an eyewitness of the occurrence. Similarly, the plea that the FIR was registered after 10 days of occurrence also does not nullify that the accident was caused by the offending vehicle. Claimant in the FIR has clearly explained that due to performance of shardha ceremony of the deceased, the delay had occasioned in lodging FIR, which explanation is acceptable. Taking into consideration of the aforesaid facts and circumstances of the case I do not find any merit in the appeal preferred by insurer/appellant.

13. In view of above it is ordered that the appellant would be entitled to the enhanced compensation of Rs. 18,84,400/- and the opposite party no. 2/national insurance company limited is directed to pay the aforesaid awarded amount to the claimants with interest at the rate of 6% from the date of filing of the application, within 3 months form the date of communication of this order in the mode and manner as decided by the Tribunal. The appellants/claimants shall be at liberty to put the award in execution in accordance with law if the respondent/insurance company failed to satisfy the award within the period mentioned above.

14. FMAT (MV) No. 8 of 2024 is thus disposed of.

15. However, in view of aforesaid discussion the appeal filed by the insurer/appellant being FMAT (MV) No. 65 of 2023 stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Ajoy Kumar Mukherjee, J.)