IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMA 18 of 2024

Mana Mandal & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

For the Appellants	:	Mr. Tamal Kumar Sen Mr. Milan Chandra lascar Ms. Priyanka Dey
For the Respondent Insurance Co.		Mr. Rishin Chakraborty
Heard on	:	16.08.2024
Judgment on	:	23.08.2024

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the judgment and award dated 28 March, 2023 passed by MAC Tribunal Jalpaiguri in MAC Case No. 257 of 2019 the claimants/appellants preferred the present appeal *interalia* on the following grounds:-

(i) That the learned Tribunal judge was wrong in assessing the monthly income of the victim deceased as Rs. 6,000/- 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 the Hon'ble Division Bench of the Hon'ble High Court Calcutta in the case of Royal Sundaram Alliance.....Vs. Sulekha Mondal (Adhikary) & Ors reported in 2019(3) TAC 68(Cal) 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 erred in law and fact in not awarding the interest @9% per annum over the assessed compensation from the date of filling of the claim application i.e. 07-08-2019 and as such the impugned award is bad in law and the same is liable to be modified.

2. So far as the monthly income of victim as assessed by the Tribunal below is concerned, it appears that the claimants in their claim application has stated that the deceased is aged about 55 years and was engaged in seasonal crop business and used to earn Rs. 9,000/- per month. In the evidence of PW1 there is only mention that the victim was a business man and used to earn Rs. 9,000/- per month, which has been denied by the insurance company during cross examination. PW-2 however has not sated anything about income of the deceased.

3. In ***Mehmooda Bee and others Vs. National Insurance Co. Ltd.*** reported in **2023 ACJ 329,** 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 that notional income should be Rs. 6,000/- per month reckoning an income of Rs. 200/- per day.

4. 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)** and contended 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 Rs. 10,000/- per month at the time of accident which has been duly proved in evidence.

5. 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. 6,000/- per month.

6. The other grounds of appeal taken by the petitioner is that the court below was not at all justified in awarding default interest and he has erred in law and fact in not awarding interest at the rate of 9% over the assessed compensation amount from the date of filing of the claim application.

7. Now let me consider whether the Tribunal was justified in not awarding any 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 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.

8. 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.

9. 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 interest rate prevailing from 2017-2018 onwards I find that the claimants are entitled to get 6% simple interest on the compensation amount as there is nothing to show that the delay was caused due to any fault on the part of the claimants. The awarded amount should also carry interest from the date of making of the claim application as on the failure on the insurance company to secure the same the claimants have to approach the tribunal for a decision on contest and in such backdrop there is no reason why the claimants would be declined to award interest, when the Tribunal finally allows the claim petition and awards amount which it finds due and payable to the claimant.

10. In such view of the matter the opposite party no.2/insurer is directed to pay the compensation amount of Rs. 6,50,800/- along with simple interest at the rate of 6% per annum from the date of filing the claim application till payment of the compensation amount, within one month from the date of communication of the order in the mode and manner as indicated by the Tribunal below in the judgment impugned.

11. **FMA 18 of 2024** is accordingly disposed of.

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.)