(2019) 08 CAL CK 0202

In the Calcutta High Court

Case No : C. Appe al From Order (FMA) No. 920 Of 2019, Adms. C. Appl Order (FMAT) No. 680 Of 2019, Civil Application (CAN) No. 7698 Of 2019, Cross Objection Appe (COT) No. 73 Of 2019

Dipali Manna & Ors APPELLANT

Vs

National Insurance Company Limited & Anr RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0202

Hon'ble Judges : Sanjib Banerjee, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, Sanjoy Paul

Final Decision : Disposed Of

Judgement

In view of the good grounds shown, the delay of about 65 days in preferring the appeal is condoned and the appeal is taken on record.

The claimants question the quantum of compensation awarded by the tribunal by suggesting that the evidence before the tribunal was completely ignored and an arbitrary figure of Rs.4,000/- per month was taken to be the notional income of the deceased victim by disbelieving the accountant and representative of the owner of the victim's employer, who were called as witnesses by the claimants to prove the monthly income of the victim.

Despite the contradiction in the evidence, it is apparent that the victim was an unskilled labourer. However, the attendance registers and extracts from the payment registers were produced before the tribunal together with the pay-slips for several months prior to the death of the victim. The tribunal disregarded the evidence on such account by only referring to the conflicting statements of the two witnesses as to the number of workers engaged by the relevant firm on a monthly basis. The tribunal referred to the discrepancy to the extent that one of the witnesses claimed that the firm engaged about 170 workmen while the other said that the number of workmen was about 120 on a monthly basis. Such contradiction, even if it be glaring - which it was not - could not have had any bearing on the monthly income of the victim at the time of his death or the documentary evidence in support thereof as produced before the tribunal. The payment registers and pay-slips show monthly payments in excess of Rs.7,000/- for at least three months prior to the month in which when the accident took place. In the wake of such material before the tribunal, the evidence could not have been wished away and the tribunal could not have fixed an arbitrary figure of Rs.4,000/- per month to be the notional income of the victim. The more appropriate quantum on such account would be Rs.7,000/- per month.

There is a cross-objection which has been filed by the insurance company. According to the insurance company, not only was the evidence as to the monthly income of the victim contrived, but an attempt was also made to indicate that the victim had a regular salaried income with the malicious view of trying to attract the dictum in Pranay Sethi as to future prospects when the victim's work status did not permit any future prospects to be taken into account.

The insurance company refers to the penultimate paragraph from the Supreme Court judgment in Pranay Sethi that instructs that "In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years ... addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years" should be regarded as the basis for computing future prospects. According to the insurance company, the victim in this case was not self-employed and neither was he on any fixed salary. The insurance company claims that the evidence before the tribunal was that the victim would be engaged as and when required on a no-work-no-pay basis. The insurance company asserts that future prospects could not have been taken into account for assessing the compensation due to the dependants or heirs of the victim.

The evidence before the tribunal was that regular monthly pay-slips would be issued by the firm that engaged the victim. For over three or four months such monthly pay-slips indicated a minimum of about Rs.7,200/- as the amount paid to the victim for the services rendered by the victim. The provisions for payment of compensation have to be looked at as beneficial to the victims and to address the complete loss of or reduced earning capacity as a result of the motor accident. In such a scenario, when the dependants of the victim in this case produced monthly pay-slips that revealed about Rs.7,200/- being the minimum amount earned over a period of four months or more prior to the death of the victim, such pay-slips ought to have been regarded as salary-slips entitling the claimants to seek compensation on account of future prospects of the victim.

In any event, in view of a subsequent judgment reported at (2018) 15 SCC 654 (Hemraj v. Oriental Insurance Company Limited), allowance for future prospects has also to be made where the monthly income is arrived at on the basis of an element of guesswork upon the absence of any cogent evidence in such regard.

There is, however, another aspect to the counter-claim. The insurance company says that there was no evidence that the father of the deceased male victim was dependent on the victim at the time of the death of the victim. The insurance company contends that since the father would not be a Class I heir of the victim and there was no evidence to demonstrate that the father was dependent on the victim, the amount on account of personal expenses, to be deducted from the income, should have been one-third and not one-fourth.

It appears that both the victim and the victim's mother were killed in the accident. According to the claimants, a separate claim was lodged for the victim's mother. There is no doubt that the husband of the victim's mother would be the principal beneficiary in respect of the compensation due on account of the present victim's mother. In the absence of any material to demonstrate that the father of the victim was dependent on the victim at the time of the victim's death, the father's inclusion as one of the claimants cannot be seen to be the basis for reducing the deduction on account of personal expenses from one-third to one-fourth.

Thus, the compensation awarded by the tribunal has to be modified. Based on the income of the victim to be Rs.7,000/- per month or Rs.84,000/- a year, after deducting one-third on account of personal expenses, the resultant figure is Rs.56,000/- to which the multiplier of 16 has to be applied since the victim was about 32 years old at the time of the accident. The total compensation due is about Rs.12,54,400/-. In addition, general damages of Rs.70,000/- have to be added for the final figure to be Rs.13,24,400/- which will carry interest at the rate of 8% per annum from the date of filing of the petition till the date of payment. Since an amount of Rs.8,76,400/- has been received till date, along with interest thereon at the rate of 6% per annum as awarded by the tribunal, the balance payment due in terms of this order, together with interest component, should be deposited by the insurance company with the relevant tribunal within two months from date for the tribunal to disburse the amount to the claimants no.1, 2 and 3 upon the tribunal being satisfied as the identity of such claimants.

FMA 920 of 2019 along with CAN 7698 of 2019 and COT 73 of 2019 are disposed of.

There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.