(2019) 09 CAL CK 0161

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 1015 Of 2019, Adms. C. Appl Order (FMAT) No. 512 Of 2015, Civil Application (CAN) No. 6626 Of 2019

Dipti Mondal & Ors — APPELLANT

Vs

National Insurance Company Limited & Ors — RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 09 CAL CK 0161

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

Bench : Division Bench

Advocate : Amit Ranjan Roy, Deb Narayan Roy

Final Decision : Disposed Of

Judgement

In view of the good grounds shown, the marginal delay in preferring the appeal is condoned.

The appeal arises out of an award of November 19, 2014 pertaining to an accident of February 16, 2013 that gave rise to a claim under Section 166 of the Motor Vehicles Act, 1988.

Three principal grounds have been canvassed by the claimants in this appeal. First, the claimants say that the quantum of monthly income has been arbitrarily taken to be Rs.3,000/- though there was cogent evidence that the victim earned Rs.9,000/- a month at the time of his death. The second ground is that though the victim was survived by his aged parents, his widow and a minor child, the tribunal has deducted one-third on account of personal expenses. Finally, it is contended that general damages have not been awarded in consonance with the judicial precedents that now hold the field.

It was claimed before the tribunal that the victim was engaged as a manager in an oil mill and he earned Rs.9,000/- per month as salary and about Rs.2,000/- by way of commission. A representative from the employer exhibited relevant pages from the salary register and also deposed before the tribunal. The evidence was that the victim earned a salary of Rs.9,000/- per month in addition to the usual commission of about Rs.2,000/-. The tribunal disbelieved the oral evidence of the employer and even the documentary evidence on the ground that the employer claimed that he had about ten employees but the salary register only showed four and that the salary register was blank in most parts except the monthly quantum allegedly paid as salary. As to the oral evidence of the representative of the employer, the tribunal found the same to be unworthy of acceptance.

It is true that in the year 2013 a sum of Rs.3,000/- would be regarded as the minimum basic monthly pay, but in this case there was evidence before the tribunal showing that the victim was employed and he earned a minimum of Rs.9,000/- per month in addition to some further amount on account of commission. The representative of the employer was cross-examined, but nothing in such cross-examination could discredit the oral testimony of such witness or the documents relied upon, save that the documents did not bear the signature of any statutory authority and they did not carry any other details apart from the monthly quantum paid to the four employees named in the relevant pages of the register.

There was an assertion made by a person as to the employment status of the victim and the quantum of his monthly salary. By merely putting suggestions to such witness that the witness's deposition was false would not be enough to discredit the evidence unless the evidence was disproved by cogent material. There were at least three other names in the register and it was open to the insurance company to call an employee of the employer to indicate that the victim was never employed at the oil mill. In the absence of such or like measure, the evidence could not have been disregarded out of hand.

On the basis of the material before the tribunal, the tribunal ought to have taken the victim's monthly income to be Rs.9,000/- and assessed compensation accordingly.

As to the deduction, since the number of dependants in this case was at least four, even if the father of the victim is disregarded, the appropriate deduction should have been one-fourth rather than one-third.

It is also evident that damages have not been awarded in tune with the judgment of Pranay Sethi. Though the judgment in Pranay Sethi came to be delivered long after the impugned award, since the matter has not yet been resolved, the claimants are entitled to the additional benefits in terms of such judgment.

Accordingly, after making the appropriate corrections, the claimants are found entitled to a gross sum of Rs.17,71,000/- together with interest at the rate of 8% per annum from the date of lodging the claim till the receipt of payment. The particulars are indicated hereafter.

Upon taking the monthly income of the victim to be Rs.9,000/- and annualising the same, a further sum of Rs.43,200/- has to be added on account of future prospects to arrive at the figure of Rs.1,51,200/- out of which a quarter has to be deducted on account of personal expenses leaving a notional figure of Rs.1,13,400/-. The appropriate multiplier would be 15 and not 16 as applied by the tribunal. After making the multiplication, the product comes to Rs.17,01,000/- to which the amount of Rs.70,000/- on account of general damages has to be added to arrive at a gross figure of Rs.17,71,000/- together with interest thereon as indicated.

After deducting the amount received of slightly less than Rs.4 lakh, the insurance company will determine the balance sum due in terms of this order and make over the same by way of account payee cheques of equal value in the names of the widow, the daughter and the surviving mother.

The relevant cheques will be deposited with the tribunal within six weeks from date, for the tribunal to identify the appropriate claimants before handing over the cheques to them.

FMA 1015 of 2019 and CAN 6626 of 2019 stand 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.