

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

F.M.A. No. – 6 of 2021

With

IA No. CAN 1 of 2020 (Old No. CAN 2351 of 2020)

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CAN 2 of 2023

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CAN 3 of 2023

Cholamandalam M/s. General Insurance Co. Ltd.

Vs

Smt. Payel Manna & Ors.

With

FMA 133 of 2021

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IA No. CAN 1 of 2020

+

CAN 2 of 2023

Payel Manna & Anr.

Vs.

Cholamadan M/s. General Insurance Co. Ltd. & Ors.

For the Appellant : Mr. Debanjan Mukherjee Adv.

**For the Respondents : Mr. Pingal Bhattacharya, Adv.
Ms. Poonam Keswani, Adv.
Mr. Rajdeep Sinha Adv**

Heard on : 03.10.2023

Judgment on : 19.02.2024

Subhendu Samanta, J.

1. Both the appeals have been preferred against the judgment and award dated 30.11.2019 passed by Learned Judge, Moor Accident Claims Tribunal Fast Track 2nd Court, Tamruk in MAC Case No. 165 of 2014.
2. The brief fact of the case is that the claimants preferred an application 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 ensured under the policy of the Insurance Company. The Insurance Company contested the claim case by filing written statement. After hearing the parties the Learned Tribunal has awarded a sum of Rs. 63,88,00/- together with 6% interest per annum from the date of filing of the case and directed the Insurance Company to pay the compensation.

3. Being aggrieved by and dissatisfied with the said award the Insurance Company preferred another appeal against the said award. Both the appeals are taken up together for uniformity of the decision.

4. The only ground for appeal by the Insurance Company is that, the Learned Tribunal has committed an error in fixing monthly income of the deceased. Learned Advocate appearing on behalf of the Insurance Company submits that the Learned Tribunal has not considered the evidences on record and came to an erroneous finding. It has been stated by the claimant that deceased was an employee of Reshmi Metalics Limited; to prove the income of the deceased one of the employees of the Reshmi Metalic Limited deposed as PW 3.

5. Learned Advocate for Insurance Company further submits that, during the cross- examination, PW-3 stated that whether any appointment letter was issued in the

name of the deceased is not within his knowledge. He also could not produce the account statement before the Court. Learned Counsel also pointed out that the PW 3 stated that the Pay-slip of the deceased does not show the number of GPF and ESI.

6. Learned Advocate for the Insurance Company further argued that the M/s. Reshmi Metalics Ltd. is a private limited Company. The document submitted before the Learned Tribunal are not sufficient to assess the income of the deceased.

7. He further argued that the documents were filed on request of the claimants, so there is an every chance of concoction. He submits that the Learned Tribunal has not properly enquire about the income of the deceased and came to an erroneous finding. He argued that, in this case the income of the deceased should be fixed notionally.

8. Learned Advocate appearing on behalf of the claimant submits that the argument advances by the Insurance Company is baseless and imaginary. PW 3 appeared with the necessary document of the said company. His identity was not challenged. Moreover, the evidences both the oral and documentary, are sufficient to assess the income of the deceased. The Insurance company has not adduced any contrary evidence thus, in this case the Learned Tribunal has correctly assessed the income of the deceased

9. In support of his contention, he cited some decisions of the Hon'ble Division Bench.

10. In **Md. Siddiqui and Anr. Vs. National Insurance Company Limited and Ors. (2020) 3 SCC 57**. In the cited case filed u/s 166 of MV Act, at the time of computation of income, The Learned Tribunal fixed the salary upon the evidence of the employer and the salary certificate was marked wherein the High Court due to absence voucher and income return took minimum wages for un-skilled worker; but, the Hon'ble Apex Court has held that there is no allegation that PW 2 was set up for the purpose of present case, interference of the High Court with finding of monthly income of the deceased passed on utter presumption uncalled for.

11. In **Ruma Raha and Ors. Vs. United India Insurance Company Ltd. reported in (2018) SCC Online Cal 16892** the Hon'ble Division Bench of this court has held:

18. The victim was employed as a sales officer in Shree Baidyanath Ayurved Bhawan (P) Ltd. (hereafter Baidyanath). Dipankar Ghosh (PW - 4) was the General Manager (HR) of Baidyanath. He sought to prove a certificate issued by the company signed by its Manager (HR), Swapan Chowdhury. PW-4 also proved the salary certificate of the victim. For reasons unknown, these two documents have not been marked as exhibits. From the certificate dated 26.4.2005, available at page 50 of the records, it appears that the salary and allowances of the victim for the period between 1.4.2004 and 31.03. 2005 was Rs.1,45,406.60. To such

amount was added a further amount of Rs.15,218/- on account of 'PF', 'ESI' and 'Bonus'.

19. A coordinate Bench of this Court in its decision Sri Krishna Kanta Singh v. Sri Parameswar Achutanan Nair, 2019 ACJ 2055 (Calcutta), has held the proceedings before the claims tribunal under Section 166 read with Section 168 of the 1988 Act to be inquisitorial in nature. Strict principles of the Evidence Act, 1872 do not apply in such proceedings. Merely because the certificate dated 26.04. 2005 was not marked as an exhibit would not afford reasonable ground to discard its contents. The contention of Mr. Singh, therefore, stands overruled.

12. In **Chapa Ghosh (Roy) and Ors Vs. Chalamandalam M/s General Insurance Company Limited and Ors reported in 2017 ACJ 2643** the Hon'ble Division Bench of this Court has held that

25. We are of the considered view that appellants' claim viewed in the light of section 3 of the Evidence Act and tested on preponderance of probability, is not improbable. The versions of the appellant no.1, PW-1, and the representative of the victim's employer, PW-3, were in conformity with the requirements of law and trustworthy, and did not suffer from inconsistency, contradiction, exaggeration or embellishment. The burden of proof having been discharged by the appellants, the onus shifted on the insurer. The insurer did not adduce any evidence to disprove that the victim was a bus conductor. Working as a conductor, the victim could have drawn Rs.6,000/- per month as monthly income, which is quite reasonable. We are, thus, unable to agree with the tribunal on this score.

13. Let me consider whether the Learned Tribunal was justified to award the compensation fixing the monthly income of the deceased in terms of the salary certificate issued by the

Reshmi Metalics Ltd. PW 3 was appeared as per summons issued by the Learned Tribunal. He stated that he is the Deputy Manager of Reshmi Metalics Ltd. and admitted that deceased Dibyendu Manna was an employee of the said concern. He produced the employment form of deceased, he also produced salary certificate dated 18.04.2013 and 05 pay slips in favour of the deceased Dibyendu Manna. The said documents were marked by the Tribunal without any objection from the Insurance Company.

14. The employment form (Ex. 10) content the name photograph of the deceased including his address, DOB, place of residence, profession and academic qualification, Family details, experience e.t.c. The said employment form was signed by the deceased (duly identified) on 06.01.2012. The salary certificate (Ex. 11) was issued by the executive director of Reshmi Metalics Ltd. stated that the deceased Dibyendu Manna was an employee of the organization and his monthly salary was 47,000/-. His 05 Pay slips (Ex. 12) are standing in the name of the deceased Dibyendu Manna in the month of September 2012 to January 2013. In all the pay slips the gross salary of the deceased are stated to be Rs. 47,000/-

15. It is the contention of the Insurance Company that Reshmi Metalics being the Private Limited Company, these documents cannot be proved and the income of the deceased from Reshmi Metalics cannot be justified without the appointment letter.

16. The Hon'ble Supreme Court has time and again laid down the principal that in a case u/s 166 of MV Act the claimants are required to prove their case on the touchstone of preponderance of probabilities. In this case the claimants has produced an witness (PW3), who also produced some documents pertaining to the income of the deceased. On the other hand Insurance Company only cross-examined the PW 3 put some suggestions.

17. On perusing the examine in Chief as well as the cross examination of PW 3, it appears to me that the credibility of PW- 3 has not shaken by the Insurance Company through cross-examinations. Though the Pay slips (Ex 12) has not mentioned the P.F No. of the deceased, but PW 3 during the cross-examination has stated that the PF account as well as ECS Act was well maintain by that concern.

18. I find nothing material to the arguments advanced by the Insurance Company in this case. The Insurance Company has not put in a single evidence to disprove the fact that deceased was an employee in the Reshmi Metalics Ltd. or he is not earn the money as stated in his pay slips.

19. I am of the view that, the Insurance Company has failed to substantiate the grounds of appeal as raised before this court. The fact and evidence of the case suggest that the deceased was employed under the Reshmi metalics Ltd. and his job was in a permanent nature.

20. In that score the income of the deceased, as assessed by the Learned Tribunal, appears to me justified. The Learned Advocate for the claimants submits that the Learned Tribunal has failed to award of future prospects by virtue of decision of Hon'ble Apex Court in Pranay Sethi Case. The deceased was aged about 37 years at the time of accident and he was a permanent job so, claimants are entitled the future prospects to the tune of 50% to the actual salary of the deceased in addition to the income of the deceased.

21. Learned Advocate for the Insurance Company raised strong objection and submits that the Learned Tribunal has awarded the just and proper compensation at this juncture the compensation cannot be enhanced.

22. Heard the Learned Advocates.

23. The Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi (supra)** has held that in a case u/s 166 of MV Act the claimants are entitled to get the future prospects and general damages according to the list mentioned in the body of the judgment itself.

24. The Hon'ble Apex Court in **Pranay Sethi (supra)** has decided the ratio so, in this case the claimants are entitled to get the said benefit.

25. It further appears that the no. of claimants are 04 and claimant No. 4 is the father of the deceased. He has not entitled

to get the compensation accordingly deduction towards the personal expenses in this case would be 1/3 instead of 1/4th. Under the observations the award passed by the Learned Tribunal need be modified.

26. **Assessment of Compensation :**

Monthly Income	46,800/-
Yearly Income	5,61,600/-
Add Future Prospects (50%)	2,80,800/-
Total	8,42,400/-
Deduction towards personal expenses (1/3)	
	- 2,80,800
	= 5,61,600/-
	X 15
Multiplier 15	84,24,000

General Damages	70,000/-

Rs. 84,94,000/-

27. The just and proper compensation comes to Rs.- 84,94,000/-. The Insurance Company is directed to pay the compensation together with 6% interest per annum from the date of filing of the claim application within 06 weeks from the date of passing of this award through the office of Learned Registrar General High Court Calcutta.

28. On such deposit the claimants No. 1&2 are at liberty to receive the same from the office of the Learned Tribunal in equal shares. The insurance Company is liberty to withdraw

the amount which they have deposited during the pendency of the appeal from the office of the Learned Registrar General High Court, Calcutta, with the accrued interest.

29. Payment of compensation is subject to ascertainment of payment of deficit court fee if any, The Learned Tribunal shall act upon the certified copy of this order to receive the deficit Court fee if any.

30. F.M.A. No. – 6 of 2021 and FMA 133 is disposed off.

Connected CAN applications are disposed of.

31. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)