

10.4.2015

FMA 262 of 2012
CAN 424 of 2015

Smt Banashree @ Banasri Chatterjee & Ors.
Vs.
The National Insurance Company & Anr.

Mr. Amit Ranjan Roy.
... for the appellants.

Mr. Arabinda Kundu.
... for the respondents.

Let Vakalatnama filed by Mr. Kundu, learned advocate for the respondents be kept on record.

Mr. Roy, learned advocate for the appellants files paper books. Let it be kept on record. It is submitted that a copy of the same has already been served on Mr. Kundu, learned advocate for the Insurance Company.

By consent of the parties the appeal is treated as on day's list and is taken up for hearing.

This appeal has been preferred by the appellants / claimants against the award dated 30th April, 2011 passed by the learned Tribunal Judge, Motor Accident Claim Cases and Additional District Judge, 2nd Court, Asansol, Burdwan in M.A.C. Case no. 139 of 2009.

Learned advocate for the appellants submits that though the deceased was a medical representative of a concern - Vivekananda Pharmaceuticals and oral and documentary evidence in support of his age were submitted, however, the learned Tribunal committed error in

disbelieving such evidence and had fixed the notional income of the deceased at Rs. 30,000/- per annum. The appeal is principally on the quantum of income.

Learned advocate for the respondent/Insurance Company, relying on the judgment of the learned Tribunal and also by referring to the relevant portions of the evidence on record, submits that the finding of the learned Tribunal is correct and therefore, the judgement and award be sustained.

Admittedly, the deceased was aged 42 years at the time of death. There is also no dispute with regard to the multiplier of 15 adopted by the learned Tribunal.

Appreciating the arguments advanced by the learned advocates for the parties and considering the evidence on record, particularly the evidence of P.W. 3, Subrata Tafadar, an employee of the Vivekananda Pharmaceuticals, we find that at the relevant time, the company had sixteen staff. A register was maintained for giving salary to the employees. During cross-examination a question was put to him as to whether the said register or any voucher had been filed. The answer was in the negative. Thereafter, a mere suggestion was put as to whether the deceased was an employee of the said pharmaceutical company or not. However, the Insurance Company did not take any further step either to adduce any independent evidence or to call for the salary register or salary slip with regard to the employment of the deceased in Vivekananda Pharmaceuticals. Had it been done by the Insurance Company, then there would have been a scope to take adverse inference. The same having not been done, the adverse presumption under Section 114(g) of the Indian Evidence Act, goes against the Insurance Company. The Motor Vehicles Act, 1988 is an enactment for the benefit and welfare of a person or a

group of persons who are the worst sufferers being the victims of road accident. Therefore, since the statute is a beneficial legislation, to try a claim case, the provisions of the Evidence Act are not to be followed rigidly. The Tribunal is to assess acceptability of the evidence, whatever minimum evidence that may be, with logic and reasonableness and with human touch. In the case in hand the respondent failed to demolish the evidence adduced by the appellants on the point of employment and the monthly income of the deceased by examining the PW 3. Therefore, in view of the above, the appeal succeeds. The income of the deceased is proved at Rs. 7,000/- per month. Thus the annual income comes to Rs. 84,000/-. From which 1/3rd is liable to be deducted since had he been alive, he would have spent for his own expenses. Therefore, Rs.84000 – Rs.32000= Rs. 56,000/-. The multiplier of 15, as adopted by the learned Tribunal, is not disputed. Hence Rs.56000x15= Rs.840000/- is the loss of annual dependency, with which Rs. 9500/-, as loss of estate, funeral expenses and loss of consortium, is to be added. Thus, the total compensation is Rs. 8,49,500/-.

We are informed that Rs. 309500/- awarded by the learned Tribunal has already been deposited before the learned Tribunal which according to the learned advocate for the appellants has been withdrawn by his clients. Therefore, the total amount of Rs. 8,49,500/- minus Rs. 3,09,500/- = Rs. 5,40,000/- shall be paid by the respondent/Insurance Company along with interest @ 6% per annum to be calculated from the date of filing of the claim case till the date of payment in the same manner, mode and proportion, as directed by the learned Tribunal. The entire amount shall be deposited by the Insurance Company before the learned Tribunal by A/c. payee cheques drawn in favour of the appellants within four weeks from the date of presentation of a copy of the certified copy of this order.

The appeal is thus allowed. The application, being CAN 424 of 2015, is accordingly disposed of.

Let the Lower Court Records be sent down, if arrived, at once.

Let a copy of this order be sent to the learned Tribunal for information and for compliance.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties on priority basis.

(Soumitra Pal, J.)

(Mir Dara Sheko, J.)