Ct. No. 26

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F.M.A. 1107 of 2009
With
IA No. CAN 1 of 2007 (Old No. CAN 9978 of 2007)
with
IA No. CAN 2 of 2018 (Old No. CAN 2408 of 2018)
Oriental Insurance Co. Ltd.
Vs.
Amitava Datta & Anr.
With
F.M.A.T. 1369 of 2008
With
IA No. CAN 1 of 2018 (Old No. CAN 2411 of 2018)
with
IA No. CAN 2 of 2018 (Old No. CAN 2412 of 2018)
Amitava Datta
Vs.
Oriental Insurance Co. Ltd. & Anr.
(Via Video Conference)

Mr. Sanjay Paul ...**For the Appellant/Insurance Co. & Respondent In FMAT 1369 of 2008**

Mr. Anup Kumar Bag ...**For the Respondent/Claimant & Appellant In FMAT 1369 of 2008**

Challenging the Judgment and/or award dated August 30, 2007 passed by the learned Judge, 5th Bench, City Civil Court, Calcutta in M.J.C. Case No.252 of 2003 (Amitava Dutta –Vs- The Oriental Insurance Co. Ltd. & Anr.), both Insurance Company and claimant preferred appeal before this Hon'ble Court mainly on the ground of quantum of compensation.

C.A.N. 2412 of 2018 is an application filed by the claimant for condonation of delay in preferring the appeal, being F.M.A.T. 1369 of 2008.

Causes being sufficient, delay is condoned and the appeal is taken up for final disposal by consent of the parties.

The application for condonation of delay is disposed of.

The applications, being C.A.N. 2411 of 2018 and

C.A.N. 2408 of 2018 filed by one Srishti Datta for recording attainment of her majority.

Initially, one Amitava Datta being the uncle of Srishti Datta filed the claim application before the Tribunal as well as this Hon'ble Court as legal guardian of said Srishti Datta. It is submitted that during pendency of the instant appeals said Srishti Datta attained majority and capable to contest the appeals through her learned Advocate.

After considering the submissions and on perusal of documents annexed thereto, applications being C.A.N. 2411 of 2018 and C.A.N. 2408 of 2018 are disposed of.

Department is directed to amend the cause title of both the appeals.

The grounds taken by the Insurance Company in the instant appeals are that the learned Tribunal awarded a total sum of Rs.25,17,405/- arising out four claim cases since parents and minor brother of Kumari Srishti Datta died in a same road traffic accident and the amount of compensation is too much exorbitant to maintain her livelihood as well as educational expenses.

In support of such ground, Mr. Sanjay Paul, learned Counsel for the Insurance Company submits that in several cases the Hon'ble Apex Court held that compensation should not be a windfall or bonanza. Mr. Paul further submits that Section 168 of the Motor Vehicle Act provides that compensation shall always be just by depending upon fact and merit of the cases.

In reply Mr. Anup Kumar Bag, learned Counsel for the claimants submits that after the decisions in the case of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.,*** reported in **(2009) 6 SCC 121** and ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.,*** reported in **(2017) 16 SCC 680** the method of granting lump sum compensation became obsolete and the Hon'ble Apex Court fixed one formula to assess just compensation. Therefore, the claimants are entitled to get compensation by following the ratio as decided in ***Sarala Varma (Supra)*** and ***(Pranay Sethi Supra)***. Mr. Bag further submits that in ***Kirti vs Oriental Insurance Company*** **Civil Appeal No. 1920 of 2021 [Arising out of Special Leave Petition(C) Nos.1872829 of 2018]** decided on 5 January, 2021 a three Judges Bench of Hon'ble Apex Court held that claimants are also entitled to get future prospect even in a case the deceased was a house wife.

Considering the ratio as decided in ***Sarala Varma (Supra)*** and ***(Pranay Sethi Supra)*** and ***Kirti (Supra)*** the award passed by the Tribunal is modified and recalculated as follows :

Monthly Income	Rs. 3,000/-
Add : Future prospect 40%	Rs. 1,200/-

Rs.4,200/-	
Annual Income (X 12)	Rs. 50,400/-
Less 1/3rd for personal expenses	Rs. 16,800/-

Loss of annual dependency	Rs. 33,600/-
Multiplier (16) – Rs.33,600/- X 16	Rs.5,37,600/-
Add: General damages	Rs. 30,000/-

Total	Rs.5,67,600/-

Mr. Paul submits that his client has already deposited the entire awarded sum of Rs.1,74,500/- before this Hon'ble Court.

Mr. Bag submits that his clients has not received any compensation amount in terms of the award dated 30.08.2007 passed by the learned Tribunal. In fact the Insurance Company deposited the awarded sum before this Hon'ble Court without interest.

Therefore, the Registrar General is directed to pay entire amount lying with him as deposited by the Insurance Company pertaining to the instant appeal together with accrued interest thereon to the claimant, Srishti Datta, through NEFT/RTGS upon furnishing bank details and proper identification within 30 days of receipt of proper application.

The Oriental Insurance Company Ltd. is directed to pay interest @6% p.a. of Rs,1,74,500/- on and from the date of filing the claim application till deposit the awarded sum before this High Court, Calcutta to the claimant, Srishti Datta, directly to her bank account.

The Insurance Company is further directed to pay the enhanced compensation of Rs.3,93,100/- (Rs.5,67,600/ - Rs.1,74,500/-) together with interest @ 6% p.a. from date of claim application till payment to the claimant, Srishti Datta, within a period of 45 days from the receipt of the particular of bank account to be supplied by the learned Counsel for the claimant/respondent to the learned Counsel for the Insurance Company.

It is made clear that the payments shall be made by the Insurance Company through NEFT/RTGS of the claimant.

With the aforesaid directions the instant appeals are disposed of.

In view of disposal of the appeals, connected applications, if any, are also disposed of. The concerned Department is directed to trace out the applications and tag the same with these appeals.

There shall be no further order as to costs.

The Registry is directed to send down the lower Court records at once, if received by this time.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)