Ct. No. 26

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16.8 2021

**F.M.A. 1629 of 2013**
**With**
**IA No. CAN 1 of 2007 (Old No. CAN 9977 of 2007)**
**with**
**IA No. CAN 4 of 2018 (Old No. CAN 2407 of 2018)**
**Oriental Insurance Co. Ltd.**
**Vs.**
**Amitava Datta & Anr.**
**With**
**F.M.A. 716 of 2009**
**With**
**IA No. CAN 2 of 2018 (Old No. CAN 2414 of 2018)**
**Kumari Srishti Datta**
**Vs.**
**Oriental Insurance Co. Ltd. & Anr.**
**( Via Video Conference )**

**Mr. Sanjay Paul** ...**For the Appellant/Insurance Co. & Respondent In FMAT 716 of 2009**

**Mr. Anup Kmar Bag** ...**For the Respondent/Claimant & Appellant In FMAT 716 of 2009**

Challenging the Judgment and/or award dated July 25, 2007 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in M.J.C. Case No. 250 of 2003 (Amitava Dutta –Vs- The Oriental Insurance Co. Ltd. & Anr.), both the Insurance Company as well as the claimant preferred separate appeals before this Hon'ble Court mainly on the ground of quantum of compensation.

The applications, being C.A.N. 2407 of 2018 and C.A.N. 2414 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 is 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. 2407 of 2018 and C.A.N. 2414 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 appeal are that the learned Tribunal awarded a total sum of Rs.25,17,405/- arising out of 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 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. He further submits that the learned Tribunal committed error in law while applying multiplier 15 instead of 14 since the deceased was 41 years old.

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 claimant is entitled to get compensation by following the ratio as decided in the cases of ***Sarala Varma (Supra)*** and ***Pranay Sethi (Supra)***. Mr. Bag further submits that considering the ratio as decided in ***Pranay Sethi (Supra)*** the claimant is also entitled to get 30% future prospect of the deceased since deceased was 41 years old and permanent employee under E.C.L. Regarding income of the deceased, there is no dispute.

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

| | |
|---|---|
| Annual Income | Rs. 1,99,840/- |
| Add : Future prospect 30% | Rs. 59,952/- |
| | ------------------- |
| | Rs. 2,59,792/- |
| Less 1/3$^{rd}$ for personal expenses | Rs. 86,597/- |
| | ------------------- |
| Loss of annual dependency | Rs. 1,73,195/- |
| Multiplier (14) – Rs.1,73,195/- X 14 | Rs.24,24,730/- |
| Add: General damages | Rs. 30,000/- |
| | ------------------- |
| Total | Rs.24,54,730/- |

Mr. Paul submits that his client has already deposited the entire awarded sum of Rs.20,02,905/- before this Hon'ble Court and out of which the claimant has already withdrawn a sum of Rs.10,00,000/- by furnishing bank guarantee bearing No. 0003113IFG000123 dated 13.11.2013 drawn on Allahabad Bank (now Indian Bank), Kolkata Main branch.

Mr. Bag submits that the Insurance Company has 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,20,02,905/- on and from the date of filing the claim application till deposit the 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.4,51,825/- (Rs.24,54,730/- - Rs20,02,905/-) together with interest @ 6% p.a. from date of claim application till payment to the claimant, Srishti Datta, through NEFT/RTGS within a period of 45 days from the receipt of the particulars of bank account to be supplied by the learned Counsel for the claimant/respondent to the learned Counsel for the Insurance Company.

The Registrar General is directed to release the bank guarantee bearing No. 0003113IFG000123 dated 13.11.2013 drawn on Allahabad Bank (now Indian Bank), Kolkata Main branch to the claimant upon proper verification and formal application.

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.)***