16.12.2021
Item No.4
Ct. No.7
CHC
(disposed of)

F.M.A.2237 of 2015
(F.M.A.T.58 of 2012)
(Physical Hearing)

Imajudin Biswas @ Khan & anr.
Vs.
The Oriental Insurance Co. Ltd. & ors.

Ms. Sima Ghosh
…for the appellants/claimants

Mr. Parimal Kumar Pahari
…for the respondent no.1/

Insurance Company

Ms. Sima Ghosh, learned advocate appearing for the appellants/claimants appeals to the Court for expeditious disposal of this appeal even going to the extent of giving a go-by to the rules involved in the process, which is not opposed by Mr. Pahari, learned advocate representing the respondent no.1/Insurance Company.

Incidentally Ms. Ghosh submits that all necessary papers connected with this appeal, necessary for the adjudication of this appeal, are with her, and the same may be produced in the interest of expeditious disposal of this appeal.

When both the parties are ad idem on the issue urging thereby for expeditious disposal of this appeal, the Court should not stand in the way.

The appeal is thus taken up for consideration, though the matter is listed under heading “To Be Mentioned”, on the prayer of both the parties.

The appeal has been preferred impugning the judgement and award dated 21st December, 2010, passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Berhampore, Murshidabad, in M.A.C. Case No.628 of 2006 on a claim under Section 163A of the Motor Vehicles Act, 1988, for the death of one Nazmul Hoque Khan, aged about 19 years, in a road traffic accident, occurred on 14th September, 2006.

Several points are focussed in the Memo of Appeal, but in course of hearing of this appeal, all points are squeezed to one and solitary issue with respect to the income of the deceased, which according to appellant has been wrongly assessed, ignoring the oral evidence adduced by the claimants during the trial of this case claim case, the deceased being a butcher by profession with an income of Rs.3000/- per month, and he suffered this accident, when he was 19 years old.

It is thus contended by Mr. Ghosh that learned Tribunal has committed error in computing the compensation without taking into account of the income actually earned by the deceased at the time of accident, but proceeded to make the assessment taking into account the notional income of the deceased at Rs.15,000/- per annum.

Ms. Ghosh, further alleges that no interest component available under Section 171 of the Motor Vehicles Act has been considered by the Tribunal, while awarding the compensation, and such provisions should be adhered to even in the appeal thereby granting interest upon due exercise of the discretion of this Court.

Mr. Pahari, learned advocate representing the respondent no.1/Insurance Company submits that the award passed by the learned Tribunal is absolutely just, and there is no scope for interference and/or modification of the award.

Mr. Pahari, further submits that since the claimants failed to establish the income of the deceased by producing the best available evidence, the learned Tribunal rightly assessed the annual income of the deceased at Rs.15,000/- notionally.

Facts leading to the death of deceased due to a road traffic accident are not disputed.

The accident having occurred on 14th June, 2006, when a butcher can be reasonably expected to be having an income of Rs.3,000/- per month. This Court finds substance in the argument advanced by the learned advocate for the appellant. In the year 2006, the income of the butcher to the tune of Rs.3,000/- per month does not appear to be exorbitant. As regards the selection of multiplier, it is disclosed from the submission advanced by the learned advocate for the appellants that the Tribunal proceeded to select the multiplier considering the age of the parents, and thus committed illegality in selecting the appropriate multiplier.

Admittedly, the Tribunal has selected 13 as multiplier, and thus computed the compensation for the claimants.

Mr. Pahari, is fair enough to bring it to the notice of the Court to the schedule available under Section 163A of M. V. Act, which is a structured formula for determination of the award. There is no need to elaborate such discussion with regard to the selection of the multiplier because unless there is proper selection of multiplier, there cannot be appropriate quantification of the award in a case under Section 163A of the M.V. Act. In view of the structured formula appended to Section 163A of the M. V. Act vide its schedule therein, the multiplier should be 16, instead of 13 as per age of the deceased.

Accordingly, the impugned order is modified and recalculated in the manner referred hereinafter:

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,000/-
Annual income	Rs.36,000/-

After 1/3rd deduction	
For personal expenses	Rs.24,000/-
Multiplier (16)	Rs.3,84,500/-
Collective General Damages	Rs.4,500/-
Total	Rs.3,88,500/-
Awarded by Tribunal	Rs.1,32,500/-
Balance	**Rs.2,56,500/-**

The appellants/claimants acknowledge receipt of the awarded amount of Rs.1,32,500/- without interest. Accordingly, the balance enhanced sum of Rs.2,56,500/- would became payable to the appellants by the insurance company together with interest accured at the rate of 6 per cent per annum on and form the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank particulars of the appellants. Claimants are also entitled to interest on Tribunal's awarded sum of Rs.1,32,500/- from the date of filing of the claim petition till award money is satisfied, and Insurance Company will calculate and pay the same at the rate of 6% per annum. Advocate for the appellants will forward the bank account details of the appellants within a fortnight from the date to Advocate for the Insurance Company. The payment shall be made in the proportion decided by the court below.

With the aforesaid directions, instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

The concerned department is directed to tag the applications, if any, with the main appeal.

There will be no order as to costs.

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

(Subhasis Dasgupta, J.)