15.12.2021
Item No.1
Ct. No.7
CHC
(disposed of)

F.M.A.501 of 2014
(F.M.A.T.869 of 2012)
IA NO: CAN/2/2021
(Physical Hearing)

Mansura Bibi @ Bewa & ors.
Vs.
Oriental Insurance Co. Ltd. & anr.

Ms. Sima Ghosh
...for the appellants/claimants

Mr. Rajesh Singh
...for the respondent no.1/
Insurance Company

The matter has appeared today I the list under the heading "To Be Mentioned" at the instance of appellants/claimants for expeditious disposal of this claim case.

Mr. Singh, learned advocate appearing for the respondent no.1/Insurance Company is kind enough to bring it to the notice of the Court on the pendency of an application being CAN 2 of 2021 relatable to prayer for striking off the name of appellant no.5 (Asrafil Sk.) for his death, occurred on 22nd April, 2014.

Ms. Sima Ghosh, learned advocate appearing for the appellants/claimants submits that though the instant CAN application was taken out at belated stage, i.e. on 6th August, 2021, but the legal heirs left behind by appellant no.5 are already on record, evident from the Memo of Appeal. Summoning of legal heirs are not required. Since all legal heirs left behind by appellant no.5 are already on record, whose names are found available in the Memo of Appeal, the name of appellant no.5 be struck off the list of appellants.

Department to make necessary correction in the Memo of Appeal forthwith.

The application being CAN 2 of 2021 stands disposed of.

Ms. Sima Ghosh, learned advocate appearing for the appellants and Mr. Rajesh Singh learned advocate appearing for the respondent No.1/Insurance Company conjointly urge before this Court for expeditious disposal of this appeal even going to the extent of giving a go-by to the rules applicable in the process.

Learned advocate for the appellants frankly submits that relevant documents requiring for adjudication of this appeal are already with learned advocate, and the same may be produced in the interest of ensuring expeditious disposal of the appeal, which is not opposed by Mr. Singh, learned advocate representing the respondent no.l/Insurance Company.

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

The matter is thus taken up for consideration of this appeal even though the matter is listed today under heading "To Be Mentioned”.

The appeal is directed against the judgement and order dated 30th July, 2011, passed by learned Member, Motor Accident Claim Tribunal/Additional District Judge, 4th Court, Murshidabad, in M.A.C. Case No.17 of 2009 on a claim under Section 163A of the Motor Vehicles Act, 1988, for the death of one Abdul Kalam @ Md. Abul Kalam Sk in a vehicular accident occurred on 1st November, 2008.

Primarily, two grounds are urged in this appeal, one pertaining to the income of the deceased, and another relating to the inadequacy of the general damages granted in this case.

Ms. Ghosh, submits that learned Tribunal has erred in law in assessing the monthly income of the deceased at Rs.2,000/- instead of Rs.3,000/- , which in any case can never be construed to be exorbitant, as the deceased was a deed writer by profession having substantial income at the moment to maintain his family members.

As regards general damages component under collective head, though the learned Tribunal has granted

Rs.7,000/- under such head, but it should have been assessed at Rs.9,500/-. Incidental to the points raised, it is brought to the notice of this Court that the statutory interest, as available under Section 171 of the Motor Vehicles Act, has not been properly taken care of in computing the award.

The award according to appellants have been most improperly assessed, and as such, the quantification of the award is not perfect so as to make the award just, proper and perfect.

Mr. Singh, learned advocate representing the respondent no.1/Insurance Company without disputing with the facts leading to the death of the deceased submits that learned Tribunal has rightly decided the compensation adhering to the provisions of the law and there lies no scope for making any interference so as to alter the awarded sum.

According to Mr. Singh, the appeal should fail.

As regards the income of the deceased, though the Tribunal computed award taking the income of the deceased at Rs.2,000/- per month, but whenever a person was engaged in deed writing as one's profession, and when the occurrence was held in 2008, it would be most reasonable for all purposes to assess the income of the deceased at Rs.3,000/-, which in any case cannot be construed to be exorbitant giving reliance upon the oral testimony of the witnesses, already examined during the trial. In that view of the matter, the income of the deceased should have been taken into account at Rs.3,000/- per month.

With regard to the general damages granted under collective head, it appears that the Tribunal has awarded Rs.7,000/- under collective head of damages component, which should have been assessed at Rs.9,500/- in view of the settled proposition of the law.

There is a statutory provision available under Section 171 of the Motor Vehicles Act dealing with the interest, that may be given inappropriate cases, which is of course subject to the discretion of the Court, but that discretion is always expected to be exercised most reasonably and judicially. Whenever a deed writer suffered accident, and ultimately succumbed to his injuries in the year 2008 in a case like this nature, the Court should have granted interest assessed at the rate of 6% per annum from the date of filing the claim hearing.

Having considered the rival submission of the parties, and bearing in mind the practice and precedent of this Court, it appears that there is strong force in the argument advanced by the learned advocate for the appellants. For the reasons mentioned hereinabove, the impugned award needs a revisit in context with the points raised as per settled proposition of law.

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

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,000/-
Yearly Income	Rs.36,000/-
Deduction	
1/3rd (Rs.12,000/-)	Rs.24,000/-
Multiplier 17	Rs.4,08,400/-
Add General Damages	Rs.9,500/-
Total compensation	Rs.4,17,500/-
Tribunal awarded and paid by insurer	Rs.2,79,000/-
Total balance payable	**Rs.1,38,500/-**

The appellants/claimants acknowledge receipt of the awarded sum to the extent of Rs.2,79,000/-, but without any interest. Accordingly, the balance enhanced sum of Rs.1,38,500/- would become payable to the appellants by Insurance Company together with interest assessed at the rate of 6% per annum on and from date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the appellants.

It is further clarified that the interest component, as assessed at the rate of 6%, must also be given to the claimants on the already paid amount of Rs.2,79,000-.

Learned advocate for the appellants will forward the bank account details of the appellants within a fortnight from the date to the learned advocate for the Insurance Company. The payment shall be made in the proportion after disturbing the share of deceased appellant no.5 in equal proportion to the other appellants, who are already on record, as already decided by the Tribunal through RTGS/NEFT directly into the bank accounts of the claimants.

With the aforesaid directions the 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.)