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F.M.A.T. 221 of 2018

I.A. CAN 1 of 2018 (old No.CAN 2393 of 2018)
I.A. CAN 2 of 2018 (old No.CAN 2400 of 2018)

(Via Video Conference)

Shriram General Insurance Co. Ltd.
Vs.
Kiran & ors.

Mr. Rajesh Singh ...For the Appellants/insurance co.

Mr. Sanat Kumar Mullick ... For the respondents/claimants

I.A. CAN 1 of 2018 (old No.CAN 2393 of 2018)

This is an application for condonation of delay in filing the instant appeal.

On perusal of the pleadings, this Court is satisfied that the cause shown for delay in filing of the instant appeal is sufficient and prayer for condonation of delay is allowed.

Accordingly, the application for condonation of delay is disposed of.

F.M.A.T. 221 of 2018

This appeal is directed against the judgement and order dated 4th September, 2017 passed by the learned Judge, City Civil Court, IInd Bench, Calcutta, Calcutta, in M.A.C. Case No.116 of 2016 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 28 years old 'Gorkh Nath @ Gorakh Nath Yadav' in a vehicular accident dated June 23, 2015.

In the award passed by the learned Tribunal it was held that the driver of the offending vehicle was holding a fake driving licence. On such ground, the insurance company was given liberty to recover the compensation amount from the owner of the offending vehicle after paying the same to the claimants. However, the insurer preferred the instant appeal and prayed for absolute exoneration. Insurer also challenged the assessment of compensation. It is submitted that the consideration of income of the deceased as Rs.8,000/- per month without any documentary evidence was excessive. Further, the selection of multiplier of 18 for the 28 years old deceased was alleged to be erroneous. Lastly, interest at the higher rate of 9% per annum was also challenged.

On the other hand, the claimants submit that the learned Judge erred in not granting any sum under future prospect and full component of general damages.

As admitted by the insurer on the point of driving licence, the Tribunal has already granted insurance company the right to recover the compensation amount from the owner of the offending vehicle after paying the same to the claimants. On the said issue, the judgements of the Hon'ble Supreme Court in the cases of **National Insurance Co. Ltd. Vs. Swaran Singh & ors.,** reported in **2004 (1) TAC 321 SC** and **Shamanna & and. Vs. Divisional Manager, Oriental Insurance co. Ltd.,** reported in **AIR 2018 (SC) 3726** hold the field. The finding of the Tribunal Judge with regard to pay and recover cannot be faulted and this Court does not find any reason to interfere with the same.

On quantum of compensation, considering the judgements of **Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.,** reported in **(2009) 6 SCC 121** and

National Insurance Co. Ltd. Vs. Pranay Sethi & ors., reported in **(2017) 16 SCC 680** and also following the precedence of this Court on the point of monthly income, I find substance in the arguments of the appellant. For the year 2015, in a claim under Section 166 of the Motor Vehicles Act, 1988, an amount of Rs.5,000/- per month does not appear to be exorbitant. The multiplier of 17 purchase factor is to be applied in this case. While assessing just compensation, claimants' entitlement of 40% as future prospect cannot be denied. Furthermore, this Court takes note that the deduction towards personal expenses of the victim ought to have been taken as 1/4th instead of 1/3rd as there were four numbers of dependent-claimants. The appellants are also entitled to Rs.70,000/- under collective heads of general damages. The interest on the compensation amount is to be paid at the rate of 6% per annum. The claim case was filed in the year 2016 and for the ease of calculation, claimants agree to accept such interest for 5 years. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter:

Particulars	Amount
Monthly income	Rs.5,000/-
Less : 1/4th personal expenses	Rs.3,750/-
Add : 40% future prospects	Rs.5,250/-
Annual Income	Rs.63,000/-
Multiplier '17'	Rs.10,71,000/-
Collective General Damages	Rs.70,000/-
	Rs.11.41,000/-
Add : Interest @ 6% p.a. for 5 years	Rs.3,42,300/-
Total	Rs.14,83,300/-

Mr. Singh, learned Counsel appearing on behalf of the insurance company submits that a total sum of Rs.19,67,838/- is deposited by the instance company by way of two separate deposits of Rs.25,000/- and Rs.19,42,838/- respectively with the Registrar General of this Court.

Accordingly, from the above deposit a sum of Rs.14,83,300/- may be disbursed to the claimants in accordance with law and in the manner and proportion as per award. The claimants/respondents shall furnish particulars of their bank account details as proof of identity with the Registrar General of this Court as expeditiously as possible. Upon deposit of such details, the Registrar General is directed to pay the said sum in accordance with law. Such payment must reach the claimants within four weeks from the date of receipt of the bank details from the claimants/respondents. The Registrar General is further directed to refund the entire balance amount along with interest accrued on the total deposit to the insurance company within a period of four weeks.

With the aforesaid directions, the instant appeal is disposed of. There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of. The concerned Department is directed to tag the application, if any, with the main appeal.

L.C.R., if any, be returned back to the Court below.

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.)