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FMAT 1339 of 2012
With
CAN 1 of 2012 (Old CAN 10838 of 2012)
With
CAN 2 of 2012 (Old CAN 10850 of 2012)

Bajaj Allianz Insurance Company Limited & Anr.
Versus
Bipasa Roy & Ors.

With
FMA 1020 of 2013
Bipasa Roy & Ors.
Versus
Bajaj Allianz Insurance Company Limited & Anr.

Mr. Rajesh Singh,
... For the Appellants.

Mr. Ashique Mondal,
Mr. Santosh Kumar Das,
... For the Respondents.

CAN 10838 of 2012 filed in FMAT 1339 of 2012

The CAN application pertaining to the prayer for condonation of delay filed by the appellants/Insurance Company is taken up for hearing.

Upon perusal of the CAN application, it appears that there has been delay caused in preferring the instant appeal, and in the relevant averments of the application, the appellants have endeavored to explain the delay.

After hearing the parties and on perusal of the pleadings, this court is satisfied that the causes shown, thereby explaining the delay have been most successfully explained, and in that view of the

matter, it appears that petitioner was prevented by sufficient causes from preferring the appeal within the period of limitation prescribed.

Delay is thus condoned.

Accordingly the application for condonation of delay stands disposed of.

Furnish relevant FMA No. upon registering the same.

FMAT 1339 of 2012
With
FMA 1020 of 2013

On the prayer of both the parties, both the appeals are heard together for common questions of law being involved in both the cases.

Both the appeals are directed against the judgment and order dated 13th February, 2012, passed by learned Judge, Motor Accident Claims Tribunal, learned Additional District Judge, Fast Track Court-III, Sealdah, South 24 Parganas, in Motor Accident Claim case No.6 of 2019, awarding compensation to the tune of Rs. 7,35,764/- on a claim under Section 166 of the Motor Vehicles Act, in connection with a vehicular accident, held on 4th April, 2008, resulting in death of 58 years old woman, serving then as a Social Welfare Officer at NRS Medical Collages and Hospital, by reason of involvement of a Vehicle bearing No. WB 25/2277 due to its rash and negligent driving.

FMAT 1339 of 2012 is an appeal preferred at the instance of Insurance Company primarily challenging grounds which are two-folds; firstly, the compensation amount awarded is not only abnormally high, but excessive also, as the claimants who are the married daughter and adult son of the deceased can hardly be regarded as dependents on the income of the deceased, and thus ascertainment of dependency has been improperly made. The another ground challenging the appeal is that since the deceased left this world, when she was 58 years old, having two years service only left, the selection of multiplier has been arbitrarily chosen, and it should have been done upon considering the residual years of service of the deceased.

FMA 1020 of 2013 has been preferred by the claimants challenging the inadequacy of the quantum of compensation awarded by the court below. The income, according to claimants, has been considered by the Appellate Court from lower side, resulting in inadequate quantification of compensation. Furthermore, the learned Tribunal has committed an error in selecting proper multiplier and erred in law also by not granting the future prospects, and the damages thereby suffered by the claimants/defendants.

Admittedly the claimants are the married daughter and the adult son of the deceased.

Facts leading to death of deceased are not disputed.

The claim application came to be preferred before the learned Tribunal by the claimants in the capacity of legal representatives of the deceased upon resorting to the provisions available in Section 166(1) (c) of M.V. Act.

Ascertainment of extent of dependency is one of the important factors, while making quantification of the award, in a claim case under the MV Act.

The expression “legal representatives” appearing in Section 166(1)(c) of the MV Act would be sufficient enough to cover the claimants within the meaning of legal representatives. Such point was raised before the Apex Court, and it was clarified by the Apex Court in the judgments of the Apex Court rendered in the case of ***National Insurance Company Limited Vs. Birender and Ors.*** reported in ***AIR 2020 SC 434*** and also in ***Montford Brothers of St. Gabriel and Anr. Vs. United India Insurance and Ors.*** reported in ***(2014) SCC 3394*** , that the legal representatives of the deceased have a right to apply for compensation. It would thus necessarily follow that even the major married and earning sons and daughter of the deceased being legal representatives have a statutory right to apply for compensation, and the Tribunal is under obligation to consider the prayer, irrespective of the

fact, whether the concerned legal representatives of the deceased were fully dependent on the deceased or not.

The claimants being daughter and son of the deceased victim would thus be entitled to receive compensation from the Insurance Company for having lost their mother, who suffered a road traffic accident.

The point regarding selection of multiplier on the basis of residual years of service has already been negated by the Apex Court in its judgment rendered in the case ***Bhogireddi Varalakshmi and Ors. Vs. Moni Muthupandi and Ors.*** reported in ***2017 (2) TAC 3 SC.***

On quantum, considering the judgments of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr.***, reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Ltd. Vs. Parnay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***, this Court finds substance in the arguments of the claimants. After due deduction of statutory tax, the salary of the deceased victim ought to have been considered at Rs.16,804/- (RS. 18,564/- less income tax Rs. 1,560/- and professional tax Rs.200/-) per month. Claimants relied upon claim application and Exts. 12, 13, and 13A to prove the same. Furthermore, the multiplier has been wrongly taken as 8 instead of 9, since the deceased was 58 years old

at the time of accident. Future prospects also ought to have been awarded. Appellants should be entitled to Rs. 30,000/- under collective heads of general damages. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	Amounts (Rs.)
Monthly Income	16,804/-
Less – 1/3 rd personal expenses (Rs.5,601/-)	11,203/-
Add – 15% future prospects (Rs.1,680/-)	12,883/-
Annual Income (x12)	1,54,596/-
Multiplier (9)	13,91,364/-
Collective General Damages	30,000/-
	
Total	14,21,364/-
	

Accordingly, the claimants shall be entitled to a principal sum of Rs. 14,21,363/- together with interest at the rate of 6% per annum to be calculated from the date of filing of the claim petition till the date of payment.

The learned advocate for the insurance company submits that by way of two separate deposits of Rs.25,000/- and Rs.7,10,764/- respectively, a total Rs. Rs.7,35,764/- have already been deposited by the insurer before the learned Registrar General of this Court. The claimants are

granted liberty to approach the learned Registrar General for release of such sum of Rs.7,35,764/- together with all accrued interest thereon. If an approach is made, the Registrar General shall take immediate steps to release the said amount positively within four weeks. It is made clear that the payment shall be made by way of NEFT/RTGS directly in the bank account of the claimants. The Registrar General shall verify all necessary documents and identity proof, the details whereof shall be supplied by claimants' advocate to the Registrar General.

Claimants agree to receive the differential principal sum from the insurer, amounting to Rs. 6,85,600/- along with interest at the rate of 6% per annum to be calculated from the date of filing of the claim petition till the date of payment. The appellant/insurance company shall pay such amount directly to the bank account of the claimants by way of NEFT/RTGS within 30 days of receipt of particulars of claimants' bank accounts, to be supplied by their counsel to the counsel for the appellant insurance company, in the manner and proposition as directed in the award passed by the Tribunal.

With the aforesaid directions, both appeals shall stand disposed of. In view of the above disposal, 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 orders as to costs.

LCR, if any may 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.

(Subhasis Dasgupta, J)