28.02.2022
Item No.1
Ct. No.7
CHC
(disposed of)

F.M.A.T.23 of 2020
IA NO: CAN/1/2020 (Old No:CAN/302/2020)
(Via Video Conference)

Chhabi Pakhira & anr.
Vs.
The National Insurance Co. Ltd. & ors.

Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy
...for the appellants/claimants
(in virtual mode)

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

In Re: CAN 1 of 2020 (Old No. CAN/302/2020)

The present CAN application is relatable to a prayer for condonation of delay.

Learned advocate, Mr. Jayanta Banerjee, appearing for the appellants/claimants has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mr. Rajesh Singh, learned advocate representing the respondent no.1/Insurance Company submits that there has been delay caused in preferring the appeal, which must be taken in view, while considering the prayer for condonation of delay.

Upon perusal of the relevant averments contained in the pleadings, it appears that the delay has been successfully explained, and appellants/claimants were prevented by sufficient causes from preferring the appeal within the statutory period of limitation. The delay being sufficiently explained, the delay caused in preferring the appeal stands condoned.

Accordingly, the application for condonation of delay being CAN/1/2020 (Old No:CAN/302/2020) stands disposed of.

In Re: F.M.A.T.23 of 2020

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go-by to the technicalities involved in the process.

It is submitted by the learned advocate for the appellants/claimants that claimants have been suffering from financial distress for want of sufficiency of money for their sustenance in this pandemic, and urges the Court for disposing of the appeal on the basis of materials furnished by both the parties to the case, which is not opposed by the learned advocate representing the Insurance Company/respondent no.1.

When learned advocates for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The appeal has emerged out against the judgement and award dated 07.01.2017, passed by the learned Additional District and Sessions Judge, FTC 2nd Court, Tamluk, Purba Medinipur in Motor Accident Claim Case No.197 of 2013 (456 of 2013), on a claim case under Section 166 of the Motor Vehicles Act, 1988, granting award to the tune of Rs.3,20,500/- to appellants/claimants of the deceased Santu Pakhira, aged about 25 years, for a vehicular accident occurred on 22nd June, 2013 by reason of involvement of vehicle bearing No.WB-33/9442 in consequence of rash and negligent driving.

Mr. Banerjee, learned advocate representing the appellants/claimants primarily urges grounds in support of this appeal, which are four folds.

It is contended by the appellants that learned Tribunal has erred in law in assessing the income of the deceased at Rs.3,000/- per month income, instead of considering the monthly income of Rs.10,000/- of the deceased, earned at the relevant point of time from his job, as fuel pump repairing mechanic. The second ground urged by the appellants/claimants is that no future prospect was granted additionally on the income of the deceased leading to inadequate quantification of the award, which can hardly be regarded to be just and proper.

Mr. Jayanta Banerjee, learned advocate for the appellants/claimants further submits that for the 25 years old deceased, learned Tribunal has wrongly applied multiplier of '17', which should have been '19' instead thereof, and also erroneously awarded Rs.14,500/- under the collective heads of 'general damages', which should have been Rs.30,000/-.

Mr. Rajesh Singh, learned advocate representing the Insurance Company/respondent no.1 submits that award has been rightly decided after considering the pros and cons of the case. Thus, according to Insurance Company/respondent no.1, there lies nothing to be interfered with in the impugned judgement, and as such there is no scope for making any interference by this Court.

Facts leading to the death of the deceased are not at all disputed.

The learned Tribunal assessed the award holding the income of the deceased at Rs.3,000/- per month, in a case where the accident was admittedly held on 22nd June, 2013. The deceased left this world, when he was 25 years old being a victim of road traffic accident.

Having considered the submission of the both sides, as well as the proposition of law laid down by the Apex Court in cases 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,*** as well as general precedence of our High Court, the Court is of the view that there is strong force in the submission advanced by the learned advocate for the appellants/claimants. The award granted by the learned Tribunal needs modification with respect to monthly income, and the same is to be considered at Rs.4,000/- per month upon considering the price index, the then prevailed. The said amount does not seem to be exorbitant, as a pump repairing mechanic in 2013 can be reasonably expected to be having an income of Rs.4,000/- per month. Claimants would also be entitled to '40% future prospect', and denial of such future prospect has thus necessarily prompted the award to become not appropriate, and just as such.

The claimants would also get Rs.30,000/- on the collective heads of general damages. In addition, the appropriate multiplier should be 18 and not 17, as the victim died when he was only 25 years old.

The above award passed by the learned Tribunal needs modification so as to make it just and proper, and with this modification, there will be no prejudice caused to either of the parties to this case. Accordingly, the order passed by the learned Tribunal is modified to the extent mentioned herein below and recalculated as hereunder:

Particulars	**Amount (Rs.)**
Monthly Income	Rs.4,000/-
Annual Income (Rs.4000/- X 12)	Rs.48,000/-
Add: 40% future prospect (Rs.19,200/-)	Rs.67,200/-
Less: 50% for personal Expenses (Rs.33,600/-)	Rs.33,600/-
Multiplier 18	Rs.6,04,800/-
Add: General Damages (Rs.30,000/-)	Rs.6,34,800/-
Less awarded amount	Rs.3,20,500/-
Enhanced amount	**Rs.3,14,300/-**

The claimants/appellants acknowledge the receipt of the entire awarded amount of Rs.3,20,500/- along with interest. The balance enhanced sum of Rs.3,14,300/- would become payable to the claimants/appellants together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition till payment within a period of 45 days from the date of receipt of the bank account particulars of the claimants/appellants from the learned advocate of the appellants. Insurance Company/respondent no.1 would pay the said sum directly into the bank accounts of the claimants/appellants through RTGS/NEFT and in the proportion as directed by the learned Tribunal.

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 shall be no order as to costs.

L.C.R., if any, may be returned back to the court below, if received in the meantime.

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.)