22.02.2022
Item No.32
Ct. No.7
AGM

FMAT 141 of 2020
CAN 1 of 2021
(Via Video Conference)

Smt. Mukta Ray @ Roy & Anr
Vs.
The Branch Manager, Cholamandalam M/S General Insurance Company Limited & Ors

Mr. Jayanta Kumar Mondal, ... For the appellants.

Mr. Debanjan Mukherjee,
Mr. S. Bose, ... For the respondents.

<u>CAN 1 of 2021</u>

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

As per Additional Stamp Reporter's report, the appeal gets delayed by 839 days. In the relevant averments of instant application, petitioners have attempted to explain the delay as to what prevented the petitioners from preferring the appeal within the period of limitation.

Mr. Debanjan Mukherjee, learned advocate for the respondents/ Insurance Company submits that there has been huge delay caused in preferring the appeal, which must be taken in view in consideration of the prayer for condonation of delay.

Having considered the submissions of both sides and explanation of appeal offered in the CAN application, it appears that the delay bas been successfully explained.

The delay thus stands condoned.

CAN 1 of 2021 is thus disposed of.

FMAT 141 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 the appeal may be disposed of on the basis of the materials furnished by both the parties to this case, which is not opposed by the respondents/insurance company.

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

The appeal is directed against the judgment and award dated July 26, 2017 passed by the learned Motor Accident Claims Tribunal, (Redesignated) Court, at Bankura in Motor Accident Claim Case No. 24 of 2016/ Motor Accident Claim Case No. 153 of 2015 on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one Rabi Ray @ Roy in a vehicular accident dated October 18, 2015.

Basically, appellants have taken grounds, which are two-folds; one pertaining to erroneous assessment of the income, and other one being non-addition of any future prospect, while making quantification of the award.

Mr. Mondal, learned advocate appearing for the appellants submits that the deceased victim was a self-employed person from his own business, and from such source, he had an earning of Rs. 8,000/- per month, which was sought to be established by adducing oral evidence at the time of trial before the Tribunal. The Tribunal, according to Mr. Mondal, has erroneously assessed the income at Rs. 3,000/- per month of deceased, without considering the real income of the deceased, he earned for his livelihood as well as for his dependant family members. It is thus, contended that in the year 2015, the deceased victim could be well considered to be a person having an income of Rs. 8,000/- per month, and there is no justification in refusing the oral testimony of the witnesses examined during trial revealing the actual income of the deceased.

As regards absence of granting future prospect, it is submitted by Mr. Mondal, that learned Tribunal has erred in law in not making addition of future prospect at the rate of 25% additionally on the income of the deceased.

Reliance is placed on decisions reported in **(2009) 6 SCC 121** in the case of ***Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & Anr,*** and ***National Insurance Company Ltd. vs. Pranay Sethi & ors.,*** reported in **(2017) 16 SCC 680,** in context with the submissions, as already advanced by the appellants.

Per contra, Mr. Debanjan Mukherjee, learned advocate for the respondents/insurance company submits that learned Tribunal has decided the award upon considering the pros and cons of the case, and in the absence of any documentary evidence being furnished revealing the income of the deceased, the Tribunal rightly assessed the compensation, which must go unaltered.

Mr. Mukherjee, thus strongly disputes with the arguments advanced by Mr. Mondal, and submits that there lies nothing to be interfered with the award.

Incidentally Mr. Mukhjee, without filing any COT application disputes with the extent of general damages being granted by the Tribunal, which according to Mr. Mukherjee should be Rs. 70,000/-, instead of Rs.1,39,500/-. Since Mr. Mondal has nothing to raise any objection with regard to actual amount of general damages, to be granted to Rs.70,000/-, as per the settled proposition of law, the court finds reasons to accept such submission of Mr. Mukherjee, representing the insurance company.

Having considered the submissions of the learned advocate for both sides, and bearing in mind the proposition of law already decided in this case of ***Smt. Sarla Verma(supra)*** and ***Pranay Sethi(supra),*** it appears that there is strong force in the submission of learned advocate for the appellant. Bearing in mind the price index, the then prevailed at the time of accident, i.e. in 2015, it would be most reasonable for all purposes to hold that the deceased victim could be safely construed to be a person having an income of Rs.5000/- per month. Such an amount can neither be exorbitant, nor inflated one.

As regards future prospect, there should have been addition to the extent of 25% on the income of deceased, which could not be granted by Tribunal.

The award granted by the Tribunal thus needs modification in terms of the calculation made hereinbelow, and with this modification, there will be no prejudice caused to either of the parties to this case, so as to make the award proper, just and perfect.

Accordingly the impugned award is modified and recalculated in the manner hereunder:

Particulars		**Amount(Rs.)**
Monthly Income		Rs. 5000/-/
Annual income (5000 x12)		Rs. 60,000/-
Add 25% futue prospect		Rs. 15000/-

		Rs. 75,000/-
Less 1/3 of personal Exp		Rs. 25,000/-

		Rs. 50,000/-
Multiplier by 13	(50000 x 13)	Rs. 650,000/-
Add: General Damages		Rs.70,000/-
		Rs. 7,20,000/-
Less awarded by Tribunal and Paid by Insurer		Rs. 4,51,500/-

Balance (enhancement)		Rs. 2,68,500/-

The claimants acknowledge receipt of the awarded amount of Rs. 4,51,500/- in terms of the direction of the Tribunal. Accordingly, the balance enhanced sum of Rs. 2,68,500/- would become payable to the appellants by the insurance company, together with interest assessed at the rate of 6 per cent per annum on and from the 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. Learned advocate for the appellants will forward the bank account details of the appellants within a fortnight from date to learned advocate for the insurance company. The payment shall be made to the claimants' bank accounts directly, in the proportion, as already decided by the 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 said appeal.

There will be no order as to costs.

Return the L.C.R., if any, received in the meantime.

Urgent photostat certified copy of this order, if applied for, b given to the parties, upon compliance of all formalities.

(Subhasis Dasgupta, J.)