

22.02.2022
Item No.33
Ct. No.7
CHC
(disposed of)

F.M.A.T.179 of 2020
IA NO: CAN/1/2021(not in file)
(Physical Hearing)

Sri Gopal Lohar & anr.
Vs.
The Branch Manager, Chola mandalam M/S
General Insurance Company Limited & ors.

Mr. Jayanta Kumar Mandal
...for the appellants/claimants

Mr. Debanjan Mukherjee,
Mr. S. Bose
...for the respondent no.1/
Insurance Company

In Re: CAN 1 of 2021

The present CAN application is relatable to a prayer for condonation of delay of 747 days (as per report of Stamp Reporter) in filing the present appeal.

Learned advocate for the appellants has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mr. Mukherjee, learned advocate representing the respondent no.1/Insurance Company submits that there has been huge 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 C.A.N.1 of 2021 stands disposed of.

In Re: F.M.A.T.179 of 2020

Learned advocates 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 27.10.2017, passed by learned Judge, Motor Accident Claims Tribunal-Cum-Additional District Judge, (Redesignated) Court, Bankura, in Motor Accident Claim Case No.40 of 2017/Motor Accident Claim Case No.152 of 2015 on a claim under Section 166 of the Motor Vehicles Act, 1988 granting award to the tune of Rs.3,99,500/- to dependents of the deceased, for the death of 20 years old person namely, Swarup Lohar in a road traffic accident, occurred on 08.10.2015 after being dashed by a vehicle/Bus bearing No.WB-67A/0652.

In course of hearing of this appeal all the points are squeezed into two (02) points.

Mr. Jayanta Kumar Mandal, learned advocate for the claimants/appellants argues that the learned Tribunal below has wrongly assessed the monthly income of the deceased at Rs.3,000/- per month, while the deceased used to earn Rs.6,000/- per month from his occupation as private tutor & the victim was a student in a college pursuing then B.A.,

which has been disclosed in the oral evidence already adduced before the learned Tribunal.

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. Accordingly, it is submitted that a lesser quantum of compensation has been wrongly awarded by the learned Tribunal.

Mr. Mukherjee, learned advocate representing the Insurance Company/respondent no.1 submits that though a COT application has not been taken yet, but the consolidated general damages have been wrongly assessed at Rs.75,000/- which should have been of Rs.30,000/-.

As regards the other points raised in this appeal, Mr. Mukherjee, submits that there lies nothing to be interfered within this appeal, as the learned Tribunal has considered every pros and cons of this case and decided the award, what is just and proper and as such there is no scope for making any further interference by this Court.

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

Upon perusal of the judgement impugned and after hearing submission offered by both the parties

and bearing in mind the decisions rendered in cases of ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121***; and ***National Insurance Company Limited vs. Pranay Sethi and ors.*** reported in ***(2017) 16 SCC 680***, it appears that there is substance in the arguments advanced by the learned advocate for the appellants.

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 08.10.2015, and the deceased left this world, when he was 20 years old being a victim of road traffic accident.

Having considered the price index the then prevailed, and the year of accident being in 2015, it will be most reasonable for all purposes for the Court to hold the income of the deceased at Rs.5,000/-per month, instead of Rs.3,000/- per month. The assessment of income, as reached by the learned Tribunal, does not appear to be on sound footing.

The learned Tribunal ought to have granted 40% additional income towards future prospect, since the deceased left this world, when he was 20 year old, and denial of such future prospect has thus necessarily prompted the award to become not appropriate and just as such.

Apart from this, though general damages to the tune of Rs.75,000/- have been awarded, but it should have been Rs.30,000/- in view of the settled propositions of law, as has already addressed by the Apex Court and propounded by Apex Court in the case of **Pranay Sethi** referred hereinabove (Supra).

There appears to be no controversy between the parties with regard to the age of deceased and selection of multiplier etc.

A modification is thus felt obligatory and such modification will make the award perfect, just and proper, and with this modification, there will be no prejudice caused to either of the parties to this case.

Accordingly, the impugned order is modified to the extent mentioned hereinbelow and recalculated in the manner referred hereinabove:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.5,000/-
Annual Income [Rs.5000/- X 12]	Rs.60,000/-
Add: 40% future prospect	Rs.24,000/-
	Rs.84,000/-
Less: 50% for personal expenses	Rs.42,000/-
	Rs.42,000/-
Multiplier 18	X 18
	Rs.7,56,000/-
Add: General Damages	Rs.30,000/-
Total Principal Compensation	Rs.7,86,000/-
Less: Award of learned Tribunal and paid by Insurer	Rs.3,99,000/-

Balance (enhancement) amount	Rs.3,87,000/
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The claimants acknowledge receipt of the awarded amount of Rs.3,99,000/- in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.3,87,000/- would become payable to the appellants/claimants by the Insurance Company/respondent no.1, together with interest assessed at the rate of 6% 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/claimants will forward the bank account details of the appellants/claimants within three weeks from date to the learned advocate for the respondent no.1/Insurance Company. The payment shall be made to the claimants' bank accounts directly through NEFT/RTGS, in the same manner and proportion, decided 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.)