22.02.2022
Item No.11
Ct. No.7
CHC
(disposed of)

F.M.A.T.180 of 2020
IA NO: CAN/1/2021
(Physical Hearing)

Sri Alok Pandit & ors.
Vs.
The Branch Manager, ICICI Lombard General Insurance Company Ltd. & anr.

Mr. Jayanta Kumar Mandal
…for the appellants/claimants

Mr. Parimal Kumar Pahari
…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 1100 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. Pahari, 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: <u>F.M.A.T.180 of 2020</u>

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 09.08.2016, passed by learned Judge, Motor Accident Claims Tribunal-Cum-Additional District Judge, (Redesignated) Court, Bankura, in Motor Accident Claim Case No.05 of 2016/Motor Accident Claim Case No.125 of 2012 on a claim under Section 166 of the Motor Vehicles Act, 1988 granting award to the tune of Rs.2,98,500/- to dependents of the deceased, for the death of 52 years old man namely, Bipin Pandit in a road traffic accident, occurred on 22.08.2012 after being dashed by a vehicle/truck bearing No.WB-33B/4557.

In course of hearing of this appeal all the points are squeezed into four (04) 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.3,800/- per month from his occupation as day labour, which has been established in the oral evidence already adduced before the 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.

The third ground urged by the appellants is that the deduction towards personal expenses of the deceased has been made erroneously by the learned Tribunal upon deducting 1/3rd, instead of 1/4th of his income, since number of dependants/claimants are five (05).

Mr. Jayanta Kumar Mandal, learned advocate for the appellants/claimants further submits that the learned Tribunal has erroneously awarded Rs.34,500/- under the collective heads of 'general damages', which should have been Rs.70,000/-. Accordingly, it is submitted that a lesser quantum of compensation has been wrongly awarded by the learned Tribunal.

Mr. P. K. Pahari, learned advocate representing the Insurance Company/respondent no.1 submits that there lies nothing to be interfered with in 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 22.08.2012 and the deceased left this world, when he was 52 years old being a victim of road traffic accident.

Having considered the price index the then prevailed, and the contribution made by deceased to his dependents family members and considering also the year of accident to be 2012, it will be most reasonable for all purposes for the Court to hold the income of the deceased at Rs.3,800/- 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 10% additional income towards future prospect, since the deceased left this world, when he was 52 years old, and the learned Tribunal also ought to have deducted $1/4^{th}$ towards personal expenses of the victim.

Apart from this, the learned Tribunal should have granted Rs.70,000/- towards the general damages under collective heads covering loss of consortium, funeral expenses and loss of estate.

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

A modification is thus felt obligatory and such modification will make the award perfect, just and proper.

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

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,800/-
Annual Income	Rs.45,600/-
Add: 10% Future Prospect	Rs.4,560/-
	Rs.50,160/-
Less: $1/4^{th}$ for personal expenses	Rs.12,540/-
	Rs.37,620/-
Multiplier 11	X 11
	Rs.4,13,820/-
Add: General Damages	Rs.70,000/-
Total Principal Compensation	Rs.4,83,820/-

Less: Award of learned Tribunal and paid by Insurer	Rs.2,98,500/-
Balance (enhancement) amount	**Rs.1,85,320/**

The claimants acknowledge receipt of the awarded amount of Rs.2,98,500/- in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.1,85,320/- 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 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, as 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 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.)