05-08-2022
Item no.19
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.398 of 2022
Sarojini Tudu & Ors.
-vs-
New India Assurance Co. Ltd & Anr.

Mr. Subhankr Mandal …for the appellants

Ms. Sucharita Paul
…for the Respondent
No.1/ Insurance Company

This appeal has been preferred by the claimants being aggrieved by the judgment and award dated September 23, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, (herein after be referred to as the Tribunal),1st Court, Paschim Medinipur in MACC No.369 of 2018.

The appeal has been formally registered.

Learned counsel for the appellants submits that he has already prepared requisite number of informal paper books containing all the relevant papers. On such score, he submits that calling for the LCR may be dispensed with. He prays for filing of the paper book in court. He also submits that one set of paper book has already been served on the insurance company.

Since the paper book contains all the relevant papers, calling for the LCR stands dispensed with. The paper book filed in court be taken on record.

As it appears from the impugned judgement, the second respondent, Aloke Tewary, being the owner of the offending vehicle, despite service of notice upon him, did not turn up before the learned Tribunal to contest the claim application. As such service of notice upon him stands dispensed with.

Now on consent of the appearing parties, the appeal is taken up for hearing.

Learned counsel for the appellants submits that the appellants accept the compensation of Rs.12,79,600/- as awarded by the learned Tribunal. But, the learned Tribunal erred in directing the payment of interest from the date of the award instead of the date of filing of the claim application.

Learned Counsel for the insurance company submits that in view of a decision in the case of ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*** reported in **(*2009) 6 SCC 121*,** the claimants are entitled to get interest @ of 6% per annum and not 8% per annum as directed by the learned Tribunal from the date of filing of the claim application.

The facts emanating from the claim application under s.166 of the Motor Vehicle Act, 1988 and which are necessary for adjudication may be summarized as follows:

On 16.06.2018 Nirmal Tudu, son of Lt. Chunaram Tudu, of village Maharajpur, P.O. Salboni, District- Paschim Medinipur was travelling in a bus bearing no.WB-33A/0426. The vehicle was running at an excessive speed and driven in a rash and negligent manner. While the bus reached near Jhitka turning under P.S- Lalgarh at about 13.30 hours, the driver of the vehicle lost his control and the bus capsized by the side of the road. As a result whereof Nirmal Tudu sustained severe injuries on his person. He was taken to a hospital where the attending doctor declared him brought dead. The victim at the time of the accident was aged 33 years. He used to earn Rs. Rs.8,000/- per month as a worker of a cold storage. Owing to the sudden demise of the victim, the claimants, who happen to be his widow, two minor children and mother, fell in acute financial distress.

At the time of the accident, the offending vehicle was insured with the first respondent, the New India Assurance Company Limited. The claimants who were the dependants of the deceased, sought for a compensation of Rs.12 lakh with interest thereon.

Upon hearing learned advocates appearing for the parties and on consideration of the evidence on record, the learned tribunal allowed the claim application and directed the Insurance Company to pay the compensation as above to the claimants in equal share. Since no appeal or cross-objection has been filed as against the findings of the learned Tribunal, this Court is of the opinion that the learned Tribunal was justified in awarding the compensation.

Now the question which falls for consideration is whether the claimants are entitled to get interest at the rate of 8% p.a. on the aforesaid awarded compensation from the date of filing of the claim application.

As submitted by learned counsel appearing for the the Insurance Company and in view of the directive passed by the Hon'ble Apex Court in the case of ***Sarla Verma*** (supra), the interest should be at the rate of 6% p.a. which should be payable from the date of filing of the claim application.

Therefore, the award passed by the learned Tribunal needs modification to the following extent.

The claimants are entitled to get the interest on the awarded amount at the rate of 6% p.a. from the date of filing of the claim application i.e. from July 3, 2018 till September 22, 2021.

Accordingly, on modification of the award passed by the learned Tribunal, the respondent No.1, the New India Assurance Company Limited is directed to pay interest at the rate of 6% p.a. on the awarded amount of Rs.12,79,600/- for the period from July 3, 2018 till September 22, 2021 with the learned Registrar General of this Court within six weeks from date.

Once the deposit is made, the learned Registrar General shall release the amount to the appellants/claimants in equal share after being satisfied with their identity.

The first appellant Sarojini Tudu, the mother and guardian of the minor claimants/appellant nos. 2 and 3 Lakhindar Tudu and Souman Tudu is directed to deposit the share of the minors in a fixed deposit account with any Nationalised bank. Such amount of money to be deposited shall not be withdrawn till the minors attain majority.

With the above direction, the appeal and connected application, if any, stand disposed of. No order as to costs.

Let a copy of this order be sent to the learned Tribunal for information.

Certified copy of this order, if applied for, shall be given to the parties upon compliance with all requisite formalities.

[Rabindranath Samanta, J]