05-08-2022
Item no.18
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.366 of 2022
Smt. Shyamali Das & Anr.
-vs-
The National Insurance Company Limited & Ors.

Mr. Jayanta Banerjee
Ms. Ruxmini Basu Roy …for the appellants

Mr. Afroze Alam
…for the Respondent No.1/Insurance company

Challenging the compensation as awarded by the learned Judge, Motor Accident Claims Tribunal, (in short Tribunal), 4th Court, Krishnagar, Nadia in MACC No.180 of 2011 as inadequate compensation the appellants have preferred the instant appeal. By the impugned judgment dated January 14, 2022 the learned Tribunal directed the Insurance Company to pay compensation of Rs.4,83,600/- and interest at the rate of 7.5% per annum from the date of the award.

The appeal has been formally registered.

It appears from the impugned award that the second and third respondents Naba Kumar Mondal and Chanchal Majumder are the joint owners of the offending vehicle, but they did not turn up before the learned Tribunal to contest the claim case despite service of notice upon them. That being so, service of notice upon them stands dispensed with.

Learned Counsel appearing 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 seeks leave to file a set of paper book in Court. He also submits that one set of paper book has already been served on the Insurance Company through its learned lawyer.

A set of paper book filed in Court by the appellants be kept on record.

In view of the above, calling for the LCR stands dispensed with.

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

Learned Counsel for the appellants submits that though the appellants accepted the compensation as awarded by the learned Tribunal. His only contention is that the interest as awarded by the learned Tribunal should be from the date of filing of the claim application and not from the date of the award.

Learned Counsel for the Insurance Company fairly 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 from the date of filing of the claim application.

As it emanates from the claim application, Subrata Das, son of Sushanta Das, of village Chitka Daspara, P.O. Chitka, P.S. Tehatta, District- Nadia on June 17, 2010 at about 9.30 p.m. was riding a cycle after visiting a fair at Betai. While he was returning his house along Karimpur-Krishnagar State Highway with his sister's husband, then a vehicle (Maruti car) bearing no.WB-52D/2008 running at an excessive speed and driven in rash and negligent manner dashed him. As a result of which he sustained injuries on his person. He was taken to Nadia District Hospital where he was declared brought dead by the attending doctor. The victim at the time of the accident was aged about 19 years. He used to earn Rs.40,000/- per year as a skilled labourer for painting building. Because of his untimely death, the claimants Shyamali Das and Sushanta Das who happen to be his parents fell in acute financial distress.

At the time of the accident, the offending vehicle was insured with the respondentNo.1, the National Insurance Company Limited. The claimants, who were the dependants of the deceased, sought for a compensation of Rs.4,50,000/-.

Upon hearing the 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 a sum of Rs.4,83,600/- as compensation to the claimants in equal share. By the award the learned Tribunal also directed the Insurance Company to pay interest at the rate of 7.5% p.a. on the awarded amount from the date of the award i.e. from January 14, 2022.

The relevant portion of the award may be excerpted as under:–

"In the light of the aforesaid discussion let me now proceed to calculate the compensation to which the claimants are entitled.

Monthly Income of the deceased	=Rs.3,000/-
Future Prospect (Rs.3,000/- x 40%)	= Rs.1,200/-
Yearly income (Rs.4,200/- x 12)	= Rs.50,400/-
After deducting 50% towards Personal expenses	= Rs.25,200/-
Total loss of dependency by applying multiplier 18 (Rs.25,200/- x 18)	= Rs.4,53,600/-
Loss of Estate	= Rs.15,000/-
Funeral Expenses	= Rs.15,000/-
Total compensation comes to	= Rs.4,83,600/-

Apart from the above, the claimants shall be entitled to interest at the rate of 7.5% per annum from the date of filing of claim application till its realization."

The relevant portion of the operative part of the award inter alia is as follows:

"The O.P. No.2/The National Insurance Company Ltd. is directed to pay the aforesaid compensation to the claimants/petitioners namely, Smt. Shyamali Das and Sri Sushanta Das in equal share along with interest @ 7.5 p.a. with effect from the date of order by way of A/C Payee Cheque within one month from the date of this order."

As stated above, the quantum of compensation as awarded by the learned Tribunal is not in dispute. The only point which falls for determination is as to whether the interest as awarded by the learned Tribunal should be from the date of filing of the claim application or from the date of the award.

As submitted by learned counsel appearing for the appellants as well as the Insurance Company and in view of the directive passed by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors.*** (supra), the interest should be counted from the date of filing of the claim application. Interestingly, the learned Tribunal in its ordering part recorded that the claimants would be paid interest from the date of the award.

In view of the above, the award needs modification to the following extent.

The claimants are entitled to get interest at the rate of 7.5% p.a on the awarded amount from the date of filing of the claim application.

Therefore, on modification of the award passed by the learned Tribunal, the respondent No.1, the National Insurance Company Limited is directed to pay interest at the rate of 7.5% p.a. on the awarded amount of money Rs.4,83,600/- from the date of filing of the claim application till the date of deposit of the awarded amount.

The Insurance Company is directed to deposit the interest as indicated above with the learned Registrar General of this Court within three 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.

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]