10.03.2022
Item No.1
Ct. No.7
CHC
(disposed of)

**F.M.A.T.197 of 2016**
**IA NO: CAN/1/2017 (Old No:CAN/9511/2017)**
**(Via Video Conference)**

**Sova Chakraborty @ Chandana Chakraborty & ors.**
**Vs.**
**ICICI Lombard General Insurance Company Limited & anr.**

Mr. Amit Ranjan Roy
...for the appellants/claimants

Mr. Parimal Kumar Pahari
...for the respondent no.1/
Insurance Company

**In Re: CAN 1 of 2017 (Old No. CAN/9511/2017)**

The present CAN application is relatable to a prayer for condonation of delay.

Learned advocate, Mr. Amit Ranjan Roy, appearing for the appellants/claimants has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mr. Parimal Kumar Pahari, learned advocate representing the respondent no.1/Insurance Company submits that there has been 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 CAN/1/2017 (Old No:CAN/9511/20217) stands disposed of.

***In Re: F.M.A.T.197 of 2016***

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 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 30th July, 2014, passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Fast Track Court, Burdwan, in M.A.C. Case No.05 of 2013, on a claim under Section 166 of the M.V. Act, 1988, granting an award to the tune of Rs.4,17,500/- to the dependents/claimants of the deceased, Asutosh Chakraborty, aged about 35 years, for a vehicular accident, occurred on 17th September, 2012 by reason of involvement of vehicle bearing no.WB 06H/9537 in consequence of rash and negligent driving.

Mr. Amit Ranjan Roy, learned advocate representing the appellants/claimants primarily urges grounds in support of this appeal, which are four folds.

It is contended by the appellants that learned Tribunal has erred in law in assessing the income of the deceased at Rs.3,000/- per month income, instead of considering the actual income of the deceased earned at the relevant time of accident. The income of the deceased, being driver with an income of Rs.9,000/- per month, according to appellants, should have been taken into account by the learned Tribunal in deciding the quantum of compensation.

The second ground urged by the appellants is that no future prospect was granted by the learned

Tribunal to the claimants on the income of the deceased victim leading to inadequate quantification of the award, which can hardly be regarded to be just and proper.

The third ground urged by the appellants/claimants is that the learned Tribunal has erroneously deducted one third instead of one forth under heading of “personal expense” of the deceased, where five numbers of claimants were dependent upon the income of the deceased.

The forth ground urged by the appellants/claimants is that the learned Tribunal has erroneously awarded Rs.9,500/- under the collective heads of ‘general damages’, which should have been Rs.70,000/-.

Mr. Pahari, learned advocate representing the insurance company/respondent no.1 submits that though a COT application has not been taken as yet, but the multiplier for the 35 years old victim has been erroneously chosen as 17, which should have been 16.

As regards the other points raised in this appeal, Mr. Pahari, submits that award has been rightly decided after considering the pros and cons of the case. Thus, according to Insurance Company/respondent no.1, there lies nothing to be interfered with in the impugned judgement and as such, there is no scope for making any interference by this Court.

Since, it is a piece of social legislation, proper multiplier should be chosen, otherwise there will be inadequate quantification of award. When appellants do not dispute as regards selection of suitable multiplier, as proposed by respondent no.1, which is most appropriate, the multiplier should be taken as 16 instead of 17.

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

Having considered the submission of the both sides, as well as the proposition of law laid down by the Apex Court in cases of ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Ltd. vs. Pranay Sethi & ors.,*** reported in ***(2017) 16 SCC 680,*** as well as general practice of our High Court, the Court is of the view that there is strong force in the submission advanced by the learned advocate for the appellants/claimants. The award granted by the learned Tribunal needs modification with respect to monthly income, and the same is to be considered at Rs.4,000/- per month upon considering the price index, the then prevailed. The said amount does not seem to be exorbitant, as a professional driver in 2012 can be reasonably expected to be having an income of Rs.4,000/- per month. In addition, claimants would also be entitled to '40% future prospect', Rs.70,000/- on the collective heads of 'general damages' and the deduction should be one forth on account of 'personal expenses' of the deceased, where the number of family member are five, in view of the ratio decided in judgement of ***Sarla Verma (Supra).***

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter:-

| **Particulars** | | **Amount (Rs.)** |
|---|---|---|
| Monthly Income | | Rs.4,000/- |
| Annual Income (Rs.4000/- X 12) | | Rs.48,000/- |
| Deduction 1/ $4^{th}$ | (-) | Rs.12,000/- |
| | | Rs.36,000/- |
| Add: 40% future prospect | (+) | Rs.14,400/- |
| | | Rs.50,400/- |
| Multiplier (AGE 35 YEARS) | | x 16 |
| | | Rs.8,06,400/- |
| Add: General Damages | (+) | Rs.70,000/- |
| | | Rs.8,76,400/- |
| Tribunal Award | (-) | Rs.4,17,500/- |
| **Balance** | | **Rs.4,58,900/-** |

The claimants/appellants acknowledge the receipt of the entire awarded amount of Rs.4,17,500/- with interest.

Mr. Roy, upon furnishing an Admit Card of appellant no.4, namely, Shilpa Chakraborty submits that in the meantime, appellant no.4 has already attained her majority, as her date of birth, recorded in the Admit Card, is 11th September, 2002.

Mr. Pahari, does not dispute with the attainment of majority of appellant no.4. The original Admit Card be returned to Mr. Roy upon furnishing xerox copy of the Admit Card.

The enhanced sum of Rs.4,58,900/- would become payable to the claimants/appellants together with interest assessed @ 6 per cent per annum, from the date of filing of the claim petition till payment by the respondent no.1/Insurance Company within a period of 45 days from the date of receipt of the bank account particulars of the claimants/appellants from the learned advocate of the appellants.

The payment is to be made in the proportion as already directed by the learned Tribunal after taking into the majority having reached in respect of appellant no.4, as mentioned hereinabove.

The said enhanced payment shall be paid by the respondent no.1/Insurance Company to the claimants/appellants through NEFT/RTGS.

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.)**