02.02.2022
Item No.11
Ct. No.7
CHC
(disposed of)

F.M.A.T.301 of 2016
IA NO: CAN/1/2016 (Old No: CAN/8945/2016)
(Physical Hearing)

Niyata Sekh & ors.
Vs.
The Oriental Insurance Company Limited & ors.

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

Mrs. Sucharita Paul
...for the respondent no.1/
Insurance Company

In Re: CAN 1 of 2016 (Old No:CAN/8945/2016)

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

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

Mrs. Sucharita Paul, 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 limiation. The delay being sufficiently explained, the delay caused inpreferring the appeal stands condoned.

Accordingly, the application for condonation of delay being C.A.N.1 of 2016 (Old No: CAN/8945/2016) stands disposed of.

In Re: <u>F.M.A.T.301 of 2016</u>

Learned advocates for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go-bye 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.

Department to furnish relevant F.M.A. particulars after registering the case as F.M.A. accordingly and the same is taken as on day's list on the prayer of both the parties.

The appeal has emerged out against the judgement and award dated 27.11.2015, passed by learned Member, Motor Accident Claim Tribunal, District Judge, Nadia, in Motor Accident Claim Case No.121 of 2014, on a claim case under Section 166 of the Motor Vehicles Act, 1988 granting to the tune of Rs.3,69,500/- to the defendants/claimants of the deceased, Akitan Sekh aged about 42 years, for a vehicular accident, occurred on 28th February, 2014 by reason of involvement of vehicle bearing No. WB-51A/3044 in consequence of rash and negligent driving.

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

In course of hearing of this appeal all the points are squeezed into four (04) points.

It is contended by the appellants/claimants that Tribunal has erred in law in assessing the income of the deceased at Rs.3,000/- per month, instead of considering the monthly income of Rs.5,000/- of the deceased housewife, in view of the principles laid down by Apex

Court in the case of ***Lata Wadhwa & ors. vs. State of Bihar & ors.*** reported in ***(2001) 8 SCC 197.*** Mr. Roy also relies upon two other decisions rendered y Calcutta High Court in the case of ***Sri Samudragupta Choudhury & anr. vs. The New India Assurance Company Limited & ors.*** reported in ***(2011) 2 WBLR (CAL) 464*** and ***The New India Assurance Company Limited vs. Shyamsundar Halder & ors.*** which was decided relying upon the decision of the Apex Court rendered in the case of ***Lata Wadhwa (supra)***.

The second ground urged by the appellants 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.

Mr. Amit Ranjan Roy, learned advocate for the appellants/claimants further submits that learned Tribunal has erroneously awarded Rs.9500/- under the collective heads of 'general damages', which should have been Rs.70,000.

It is also submitted by Mr. Roy that the claimants are also entitled to interest on the awarded sum from the date of filing of the claim case.

The 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 28th February, 2014. The deceased left this world, when she was 42 years old being a victim of road traffic accident. She was a housewife doing household works. The multifarious service rendered by the victim, being a housewife in a family, to make it operational for all purposes cannot be exactly and appropriately estimated. The Tribunal therefore has not taken into account the tangible service rendered by the deceased housewife for her family to sustain.

Upon seeing such referred judgements as discussed hereinabove in the case of ***Lata Wadhwa (supra), Samudragupta (supra) and Shyamsundar Halder (supra),*** this Court is of the view that realistic approach has to be applied in the given circumstances of the case for a housewife, who left this world being a victim of road accident. The gratuitous service rendered by the wife with true love and affection to the children and her husband and other family members, while managing the household affairs, cannot be equated with the services rendered by the others.

Having considered the price index and the contribution made by the deceased wife to her house and considering the year of accident to be 2014, it will be most reasonable for all purposes for the Court to hold the income of the deceased at Rs.4,000/- per month, instead of Rs.3,000/- per month. The assessment of the income, as reached by the Tribunal, does not appear to be on sound footing.

Mrs. Sucharita Paul, learned advocate representing the Insurance Company/respondent no.1 submits that though a COT application has not been taken as yet, but the multiplier has been erroneously chosen as 15, which should have been 14. As regards the other points raised in this appeal, Mrs. Paul, 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 14 instead of 15 in view of the judgement passed by Supreme Court in the case of ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCCC 121.***

Upon consideration of the proposition of law laid down in the case of ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680*** as well as the general practice and precedents of this Court, there should have been addition of 25% towards the income of the deceased on account of the future prospect. Denial of such future prospect has thus necessarily prompted the award to become not appropriate and just as such.

Though general damages to the tune of Rs.9,500/- have been awarded, but it should have been Rs.70,000/ in view of the settled propositions of the law, as has already addressed by the Apex Court and propounded by the Apex Court in the case of ***Pranay Sethi*** referred hereinabove (Supra).

Having considered the submission of both sides and upon considering the proposition of law laid down by the Apex Court in the cases of ***Smt. Sarla Verma (Supra)*** and ***Pranay Sethi (Supra)***, this Court has every reason to hold that appellants/claimants have strong case to present thereby requiring this Court to revisit the award for the reasons mentioned hereinabove.

The above award passed by the learned Tribunal needs modification so as to make it just and proper, and with this modification, there will be no prejudice caused to either of the parties to this case.

Accordingly, the order passed by the learned Tribunal is modified to the extent mentioned hereinbelow and recalculated as hereunder:-

Particulars		**Amount (Rs.)**
Monthly Income		Rs.4,000/-
Add 25% future prospect	+	Rs.1,000/-
		Rs.5,000/-
		X 12
		Rs.60,000/-
Less: 1/3rd personal expenses	-	Rs.20,000/-

		Rs.40,000/-
Multiplier of 14 to be used		X 14
		Rs.5,60,000/-
Collective heads of General Damages	+	Rs.70,000/-
		Rs.6,30,000/-
Less: Awarded amount	-	Rs.3,69,500/-
Balance enhanced amount		**Rs.2,60,500/-**

The claimants acknowledge the receipt of the entire awarded amount of Rs.3,69,500/- minus interest. The balance enhanced sum of Rs.2,60,500/- would become payable to the claimants/appellants together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition till payment 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.

Insurance Company/respondent no.1 is also directed to pay 6% interest on the awarded amount, if not already disbursed, to be calculated from thedate of lodging of the claim till the date of payment.

With the aforesaid decision, the instant appeal stands disposed of.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

The concerned department is directed to tag the application, 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.)