S/L 31
23.02.2022
Court No.7
SD

FMAT 441 of 2017
With
CAN 1 of 2017
(Old CAN 6276 of 2017)
(Application is not in the file)
With
CAN 2 of 2022
(Via Video Conference)

Shilpa Halder (Minor) & Ors.
Vs.
The Oriental Insurance Company & Anr.

Mr. Amit Ranjan Roy
... for the Appellants/Claimants.
Mr. Rajesh Singh
... for the Respondent/Insurance Co.

<u>In Re: CAN 1 of 2017 (Old CAN No.6276 of 2017)</u>

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

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. Rajesh Singh, 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 of 2017 stands disposed of.

In Re: CAN 2 of 2022

The present CAN application is for expunging the name of the appellant no.3, namely, Subhadra Halder, who died intestate on 27th January, 2022.

The legal representatives and heirs of the deceased are already on record as appellant nos.1 and 2.

Upon perusal of the application and taking into account of the death of the appellant no.3, namely, Subhadra Halder, the application deserves success on the ground that the legal heirs left by Subhadra Halder are already on record.

Accordingly, the application for expunging the name of appellant no.3, being CAN 2 of 2022 is allowed.

The department is directed to amend the cause title of the Memorandum of Appeal by incorporating the necessary changes.

In Re: F.M.A.T. 441 of 2017:-

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 the 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 judgment and award dated 28th September, 2016 passed by the learned Member, Motor Accident Claim Tribunal, District Judge, Nadia in M.A.C. Case No.186 of 2015, on a claim under Section 166 of the M.V. Act, 1988, granting an award to the tune of Rs.4,41,500/- to the dependants/claimants of the deceased, Lakshman Halder aged about 29/30 years, for a vehicular accident, occurred on 9th June, 2015 by reason of involvement of vehicle bearing no.WB-51/1751 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-fold. It is contended by the appellants that Tribunal has erred in law, in assessing the income of the deceased at Rs.3,000/- per month, instead of considering the actual income of the deceased earned at the relevant time of accident. The income of the deceased, being a salesman of one M/s. Mondal Bastralaya with an income of Rs.7,000/- per month, according to appellants, should have been taken into account by the 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 awarded Rs.9,500/- 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.

Mr. Rajesh Singh, 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 29/30 years old victim has been erroneously chosen as 18, which should have been 17. As regards the other points raised in this appeal, Mr. Singh, 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 judgment 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 17 instead of 18.

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.5,000/- per month upon considering the price index, the then prevailed. The said amount does not seem to be exorbitant, as a salesman in 2015 can be reasonably expected to be having an income of Rs.5,000/- per month. In addition, claimants would also be entitled to '40% future prospect', Rs.70,000/- on the collective heads of general damages and also ‘interest’, from the date of filing of the claim application till payment.

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

Particulars	Amount (Rs.)
Monthly income	5000.00
Add 40% future prospect (Rs.2000/-)	7000.00
Annual Income (x 12)	84000.00
Less: 1/3rd personal expenses (Rs.28000/-)	56000.00
Multiplier (x 17)	952000.00
Add General damages (70,000.00/-)	1022000.00
Less: Awarded amount	4,41,500.00
Enhanced amount	**5,80,500.00**

The claimants acknowledge receipt of the entire awarded amount of Rs.4,41,500/- minus interest. The enhanced sum of Rs.5,80,500/- 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/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. Insurance company is also directed to pay 6% interest on the awarded amount, if not already disbursed, to be calculated from the date of lodging the claim till the date of payment.

The payment is to be made in the proportion as already directed by the learned Tribunal. The share of appellant no.3, since deceased, is to be equally distributed between appellant nos.1 and 2.

With the aforesaid directions, the instant appeal is disposed of.

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

There shall be no order as to costs.

Return the lower courts records, 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.)