

22-11-2022
Item no.21
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.371 of 2022
National Insurance Company Limited
-vs-
Kalpana Mondal & Ors.
with
CAN No.3 of 2022
and
CAN No.2 of 2022

Mr. Rajesh Singh

...for the appellant

Mr. Jayanta Kr Mondal ...for respondents-claimants

CAN No.3 of 2022 is for recording attainment of majority of the second respondent, one of the claimants in this appeal.

Mr Rajesh Singh, learned advocate appearing for the appellant-insurance company, submits that during pendency of the instant appeal, the second respondent attained majority in view of the date of birth appearing in the Aadhar Card, and as such the fact is required to be incorporated in the memorandum of appeal. He seeks leave to amend the memorandum of appeal in this regard.

Mr Jayanta Kumar Mondal, learned advocate, represents the claimants.

It appears from a photocopy of Aadhar Card annexed to the application that the date of birth of the second respondent is July 26, 1996 and accordingly he already attained majority.

Accordingly, learned advocate for the appellant is granted leave to incorporate such fact in the memorandum of appeal.

With the above, **CAN No.3 of 2022** stands **allowed**.

Learned advocate appearing for the appellant-insurance company prays for dispensing with the calling for LCR as well as preparation of informal paper books as the quantum has been challenged only on the grounds of future prospect and general damages.

This appeal is directed against a judgement and award passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Purba Bardhaman in MACC No.18 of 2016 under section 163A of the Motor Vehicles Act, 1988.

Brief fact of the case is as follows. On August 3, 2011 at about 2.30 a.m./2.40 a.m. while the victim was driving a Matador van bearing No.WB41E/1308, at that relevant point of time a bus bearing no.WB37/3407 in a rash and negligent manner dashed the Matador and as a result of which the victim sustained severe injuries all over his bodies and was taken to a hospital for treatment, and thereafter on August 11, 2011 he succumbed to his injuries.

On account of sudden demise of the victim, the claimants being the widow and the son of the victim filed the claim application under section 163A of the Motor Vehicles Act, 1988 for compensation before the Motor Accident Claims Tribunal.

Upon considering the materials on record, the evidence adduced on behalf of the claimants, both oral and documentary, the learned tribunal allowed compensation to the tune of Rs.6,07,600/- along with interest from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned judgement and award, the insurance company has filed the present appeal.

It is found that the third respondent, the owner of the offending vehicle, did not contest the claim application and the case was disposed of ex parte against him. In such view of the matter, service of notice on the third respondent stands dispensed with.

Mr Rajesh Singh, learned advocate appearing for the appellant-insurance company, submits that the learned tribunal firstly erred in granting future prospect of 40 per cent of the annual income of the deceased; and secondly in assessment of the general damages of Rs.70,000/-. He submits that in an application under section 163A of the Motor Vehicles Act, 1988 there is no scope to grant future prospect and for assessing general damages. Second Schedule to the Act is to be strictly followed. In the light of the aforesaid submission, he prays for modification of the impugned order of the learned tribunal.

Mr Jayanta Kumar Mondal, learned advocate appearing for the first and second respondents (claimants), concurs to the submission advanced on behalf of the appellant.

It appears from the impugned judgement and award that the learned tribunal has granted compensation towards future prospect to the extent of 40 per cent of the annual income of the deceased victim and also granted general damages of Rs.70,000/-. Since the application for compensation was filed by the claimants under section 163A of the 1988 Act, accordingly, the compensation granted towards future prospect and general damages requires to be modified.

The other aspects of the learned tribunal has not been challenged in the appeal.

In view of the aforesaid aspects, the compensation is calculated as hereunder: –

Monthly income	Rs.3,000/-
Annual income(Rs.3000x12)	Rs.36,000/-
Less: deduction of 1/3 towards personal and living expenses	Rs.12,000/-
	
	Rs.24,000/-
Multiplier 17 (Rs.24,000x17)	Rs.4,08,000/-
General Damages	Rs.9,500/-
	
Total	Rs.4,17,500/-

Thus, the total compensation comes to Rs.4,17,500/-.

The appellant is thus directed to deposit the amount of Rs.4,17,500/- along with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General of this court.

Upon receipt of the aforesaid amount, learned Registrar General shall disburse the amount in favour of the claimants in equal proportion, subject to satisfying their identity.

It is informed that a sum of Rs.25,000/- as statutory deposit has been deposited by the insurance company vide challan no.1960 dated February 4, 2022. Accordingly, the appellant is granted liberty to withdraw the amount of statutory deposit along with interest. Learned Registrar General shall also refund Rs.25,000/- along with interest to the appellant-insurance company.

With the above observation, the appeal and the connected application, if any, stand disposed of.

Interim order, if any, stands vacated.

Certified copy of this order, if applied, shall be given to the parties.

[Bivas Pattanayak, J]