07.03.2022
Item No.28
Ct. No.7
AGM/RKB

F.M.A. 988 of 2015
CAN 1 of 2019 (Old CAN 11363 of 2019)
CAN 2 of 2019 (Old CAN 11364 of 2019)
CAN 3 of 2019 (Old CAN 11365 of 2019)

Habibar Rahaman and Ors.
Vs.
National Insurance Company Limited & Anr

Mr. Subir Banerjee.
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmani Basu Roy.
..... For the appellants/claimants.

Mr. Afroze Alam
...for the respondent no.1/Insurance Company.

<u>CAN 1 of 2019 (Old CAN No. 11363 of 2019)</u>

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

Mr. Afroze Alam representing respondents/ Insurance Company furnishes affidavit-in-opposition to challenge the condonation application.

Appellants have attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Learned advocate representing the respondent No.1/Insurance Company submits that the delay caused in preferring the appeal, 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 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 2019 (Old CAN No. 11363 of 2019) stands disposed of.

CAN 2 of 2019 (Old No. 11364 of 2019)

This is an application for recording the death of appellant no.1, namely, Habibar Rahaman, and also for deletion of his name from the Memo of Appeal, as the legal heirs left behind by the appellant no.1 are already on record, being appellant nos.2 to 6.

Mr. Afroze Alam, learned advocate appearing for the respondent/Insurance Company has nothing to raise any objection in respect of the proposed prayer for recording the death of appellant no.1. Accordingly, the application for recording the death of appellant no.1 is allowed.

Department to make necessary correction in the Memo of Appeal recording the death of appellant no.1.

The application being CAN 2 of 2019 (Old CAN No. 11364 of 2019) stands disposed of.

FMAT No. 988 of 2015

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 that since the appellants/claimants have been suffering from financial distress for want of sufficiency of money for their sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this 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 been preferred impugning the judgment and award dated 3.12.2012 passed by Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri in M.A.C Case No. 183 of 2008 on a claim case under Section 166 of the M.V. Act, granting award to the tune of Rs. 3,69,500/- for the death of one Tarikul Islam, a 40 year old Supervisor serving then in a private firm, with an income of Rs.4500/- per month, for a vehicular accident occurred on 28.02.2008 due to rash and negligent driving of an offending vehicle bearing Registration No. WB-73A/6346.

During the course of hearing, all the points raised by Mr. Banerjee are squeezed into four (04) points pertaining to non-consideration of the future prospect, erroneous deduction of personal expenses to the extent of 1/3rd, which should have been 1/4th in the instant case, improper grant of damages to the extent of Rs.9500/-, which should have been Rs. 70,000/-, and absence of consideration of interest component, as available under Section 171 of the M.V. Act.

Mr. Subir Banerjee, learned advocate representing for the appellants/claimants submits that the Tribunal has erred in law in not granting any future prospect to the appellants on the income of the deceased, which ought to have been 40% upon considering the age of the deceased, as he left this world, at his 40 years of age, being a victim of road traffic accident.

The second ground urged by Mr. Banerjee is that there has been erroneous deduction of personal expenses to the tune of 1/3rd, but the same should have been 1/4th, since the deceased left behind six claimants.

Though there has been grant of general damages to the extent of Rs.9500/-, but according to Mr. Banerjee, under the full component of general damages, the amount should be Rs.70,000/- instead of Rs.9500/-.

The last ground urged by the appellants is that the Tribunal ought to have granted interest on the awarded amount from the date of filing of the application, and in this case Tribunal has granted default interest thereby making contravention of the provision of Section 171 of the M.V. Act, which should have been granted from the date of filing of the claim application till the realization of the award.

Mr. Afroze Alam, learned advocate representing the Insurance Company/respondent no.1 without disputing with the facts submits that the award has been rightly decided by the Tribunal upon considering the pros and cons of the case. Mr. Alam strongly opposes the case made out by the appellants. According to Insurance Company/Respondent No.1, there lies nothing to be interfered with in this appeal and as such, there is no scope for making any interference by this Court.

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

Mr. Banerjee has placed reliance on decisions reported in ***(2009) 6 SCC 121*** in the case of ***Smt. Sarla Verma & Others –vs- Delhi Transport Corporation & Another*** and ***(2017) 16 SCC 680*** in the case of ***National Insurance Company Ltd. –vs-***

Pranay Sethi & Ors. to fortify his submission in context with the points raised in this appeal.

Having considered the submission of both sides as well as the proposition of law laid down by the Apex Court in the case of ***Smt. Sarla Verma (supra)*** and ***Pranay Sethi (supra)*** as well the general precedence of our High Court, the court is of the view that there is strong force in the submissions advanced by the learned advocate for the appellants/claimants.

Since the victim left this world, when he was 40 years old with some substantial amount of income from a private firm, the claimants are justified in advancing the prayer for 40% addition on the income of the deceased towards the head of future prospect, and Rs.70,000/- under collective heads of general damages, instead of Rs.9500/- already granted by the Tribunal.

As the deceased left behind six dependents/claimants at the time of accident, the Tribunal ought to have deducted $1/4^{th}$ instead of $1/3^{rd}$ towards the deduction for personal expenses of the deceased.

In view of the proposition of law laid down in Section 171 of the M.V. Act, it is quite well settled that the compensation amount should carry interest from the date of filing of the claim application till the realization of the award. No further elaboration is necessary on such issue.

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

Particulars	**Amount (Rs.)**
Monthly Income	Rs. 3,000,00
Annual Income	Rs. x12
	Rs. 36,000.00
Add: Future Prospect @ 40% (since the age of the deceased is 40 years)	Rs. 14,400.00
	Rs. 50,400.00
Less: Deduction ¼	Rs. 37,800.00
Multiplier 15	x 15
	Rs. 5,67,000.00
Add: General Damages	Rs. 70,000.00
	Rs. 6,37,000.00
Less: Award of Learned Tribunal	Rs. 3,69,500.00
Balance enhanced amount	**Rs. 2,67,500.00**

The appellants/claimants acknowledged the receipt of the entire awarded amount of Rs. 3,69,500/- in terms of the direction of the Tribunal. Accordingly, the balance enhanced sum of Rs.2,67,500/- would become payable to the appellant Nos. 2 to 6 by the respondents No.1/Insurance Company with the interest assessed @ 6% per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the claimants/appellants. The Insurance Company shall also pay interest @ 6% per annum on the awarded sum of Rs.3,69,500/- by the Tribunal from filing of the claim application till the previous date of awarded sum.

Learned counsel for the appellants/claimants will forward the bank account details of the appellant nos. 2 to 6 within a fortnight from the date to the learned counsel of the respondent no.1/Insurance Company. The payment shall be made in the proportion, as decided by Tribunal.

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 will be no further order as to costs.

L.C.R. be returned, if reached in the meantime.

Urgent photostat certified copy of this order, if applied for, be given to the respective parties, upon compliance of all formalities on priority basis.

(Subhasis Dasgupta, J.)