23.02.2022
Item No.27
Ct. No.7
CHC
(disposed of)

F.M.A.T.1500 of 2011
IA NO: CAN/1/2022
(Physical Hearing)

Sri Darshan Prasad & anr.
Vs.
ICICI Lombard General Insurance Company Ltd. & anr.

Sk. Abu Abbas Uddin,
Ms. Nahid Rahman
...for the appellants/claimants

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

In Re: CAN 1 of 2022

The present CAN application bearing CAN/1/2022 is relatable to a prayer for condonation of delay.

Learned advocate, Mr. Sk. Abu Abbas Uddin, appearing for the appellants/claimants submits that though there has been delay of 10 days in filing the appeal beyond the statutory period of limitation, but there are good grounds/circumstances preventing thereby the petitioner from preferring the appeal within period of limitation.

Mr. P.K. 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 in consideration of application for condonation of delay.

In the relevant averments of the pleadings, appellants/claimants have explained the delay. The delay thus explained appears to be sufficient. Accordingly, delay stands condoned.

The application being CAN/1/2022 is thus disposed of.

In Re: <u>F.M.A.T.1500 of 2011</u>

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 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 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 16th day of August, 2011, passed by the learned Additional District Judge, M.A.C. Tribunal, 7th Court, Alipore, South 24 Parganas in M.A.C. Case No.122 of 2010, *Darshan Prosad & anr. vs. Shoaib Akhtar Khan & ICICI Lombard General Insurance Co. Ltd.* on a claim case under Section 163A of the M.V. Act, 1988, granting award to the tune of Rs.82,000/- (Rupees eighty two thousand) to the appellants/claimants for the death of one Parbati Devi Prasad, in a vehicular accident, occurred on May 26, 2010, by reason of involvement of vehicle bearing No. NL-01A/6486 (Trailor).

The compensation was awarded upon consideration of evidence, both oral and documentary, with which the appellants were not satisfied with. Hence this appeal.

Incidentally, Mr. Abu Abbas Uddin submits that learned Tribunal ought to have assessed the compensation relying upon the old 2nd Schedule for the grant of just compensation.

Mr. P. K. Pahari, learned advocate for the respondent no.1/Insurance Company has nothing to raise any objection and candidly submits that appeal may be disposed of deciding the award in terms of the 2nd Schedule of the M.V. Act, 1988, to which the appellants/claimants would not express any grievance and they are willing to take compensation in terms of the 2nd Schedule of the M.V. Act.

The only point raised in this appeal requiring address by this Court is that the learned Tribunal granted lump sum compensation under Section 163A of the M.V. Act without adhering to structured formula, appended to Section 163A of the M.V. Act thereby ignoring the situation that the accident was admittedly held on 26th May, 2010. Under such circumstances, the structured formula appended to Section 163A of the M.V. Act should have been made into operation, while deciding the compensation.

Having considered the submission of both the sides, the award passed by the learned Tribunal needs modification relying upon the 2nd Schedule of the M.V. Act, 1988, on the ground that the accident was admittedly held on 26th May, 2010, and the corresponding notification, relied upon by the learned Tribunal, appears to be silent, as regards it's giving effect with retrospective operation. In the absence of any specific stipulation in such Gazette notification with regard to its retrospective operation, such notification is always perceived to be with prospective operation.

In that view of the matter, awarded sum needs a revisit upon perusal of the judgement of the learned Tribunal in context with the solitary point raised in the appeal, 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.

The deceased was a street hawker at the time of accident, and he had an earning of Rs.3200/- per month, with which he had to maintain his livelihood, and family members also. In course of the evidence adduced before the trial court, no documentary evidence, however, could be adduced. In the year 2010, it would be quite reasonable for all the purposes to hold that a street hawker had an earning of Rs.3000/- per month, bearing in mind also the then price index prevailed at that time. Such amount cannot be regarded as exorbitant or inflated also.

Selection of a multiplier is of immense potentiality, since victim left this world, when she was 38 years old. Multiplier should be selected as 16 for the perfect quantification of the award.

As regards deduction towards personal expenses, 1/3 of the annual income of the deceased should be deducted, and Rs.9500/- should be granted as general damages, in view of the structure laid down in the 2nd Schedule attached with Section 163A of the M.V. Act.

Accordingly, the above order passed by the learned Tribunal is thus modified to the extent mentioned here in below and recalculated as follows:

Particulars		**Amount (Rs.)**
Monthly Income		Rs.3,000/-
Annual Income (rs.3000/- X 12)		Rs.36,000/-
Less: 1/3rd deduction for personal expenses	(-)	Rs.12,000/-
Annual income after deduction		Rs.24,000/-
Multiplier 16 to be used		X 16
		Rs.3,84,000/-
Add: General Damages	(+)	Rs.9,500/-
Total Compensation		**Rs.3,93,500/-**

Learned counsel for the appellants/claimants submits that their appellants/claimants have received a sum of Rs.82,000/- compensation amount in terms of the award, dated 21.12.2018 passed by the learned Tribunal.

Therefore, the respondent no.1/Insurance Company is directed to pay a sum of Rs.3,93,500/- - Rs.82,000/- = Rs.3,11,500/- together with 6% interest from the date of filing of claim application till payment to the claimants within 45 days of receipt of particulars of their bank accounts, to be supplied by their learned counsel to the respondent no.1/Insurance Company.

It is made clear that the payments shall be made through NEFT/RTGS in the proportion as decided by the learned 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 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.)