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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMAT 1406 of 2013
with
IA No. CAN 1 of 2017 (CAN 10222 of 2017)

Aduri Bewa & Ors.
Vs.
The New India Assurance Company Limited & Anr.

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

Ms. Sayanti Santra
... For the respondent no.1/Insurance Co.

In re: CAN 1 of 2017 (CAN 10222 of 2017)

This application has been filed for condonation of delay in filing the Motor Accident Claim Appeal after 331 days.

Heard both sides.

Considering the reasons assigned in the application itself and also keeping an eye to the beneficial legislation, the prayer for condonation of delay is allowed.

The application stands disposed of.

In re: FMAT 1406 of 2013

The appeal is admitted.

Service of notice to the respondent no.1/Insurance Company is dispensed with as the Insurance Company is represented by the learned advocate and the learned Tribunal disposed of the Motor Accident Claim Case against the owner of the offending vehicle ex parte.

Therefore, service of notice is also dispensed with in respect of the owner/respondent no.2.

The appeal is taken up for hearing.

The appeal is directed against the judgment and award passed on 28th September, 2012 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Murshidabad in MAC Case No.415 of 2008 under Section 163A of the Motor Vehicles Act, 1988, passing an award of Rs.1,69,500/-.

Challenging the quantum of award, this appeal has been preferred by the claimants, i.e., widow and parents of the deceased on account of an accidental death of the deceased Nagar Sk. @ Sohab Ali on 8th September, 2008 at about 14.00 hours, while the offending vehicle bearing registration no.WB-57/3883 (Trekker) coming with high speed and in rash and negligent manner, applied brake suddenly and the deceased fell down from the said Trekker who was travelling in the said vehicle at that time, sustained severe injury and succumbed to his injuries ultimately. At the relevant point of time, the deceased was aged 19 years and is to earn Rs.3,000/- per month from his business. Accordingly, the claimants filed the petition claiming compensation to the tune of Rs.2,50,000/-.

The respondent no.1/New India Assurance Company Limited contested the claim petition by filing written statement denying all material allegations of the claim petition, contending, inter alia, that the fetal accident took place due to negligence on the part of the deceased himself so the Insurance Company is not liable to pay any compensation.

Owner of the offending vehicle (Trekker) did not contest the case before the learned Tribunal.

To prove the case, the appellants/claimants examined two witnesses. Aduri Bewa, the wife of the deceased, examined herself as PW-1 and one eyewitness, namely, Yousof Ali was examined as PW-2. In course of their evidence, copy of the policy and post-mortem report were admitted in evidence.

Learned Tribunal after assessing the entire evidence on record, returned his finding to the effect that the notional income of the deceased was Rs.15,000/- per annum after applying multiplier 16, assessed the entire compensation to the tune of Rs.1,69,500/-.

I have also gone through the entire evidence on record along with the documents admitted in the case. From the evidence and also the post-mortem report show the registering of Berhampore Police Station Case No.439 of 2008 dated 8th September, 2008 under Sections 279/304 of the Indian Penal Code and all the factum of the accident were corroborated by both PW-1 and PW-2. But it is apparent from the evidence that the appellants/ claimants could not produce any single evidence showing the income of the deceased at the time of death.

In the facts and circumstances, I find that the notional income should be Rs.3,000/- per month instead of Rs.15,000/- per annum.

If that be the position, the compensation may be computed as follows:-

Monthly Income		Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)		Rs. 36,000/-
Less: 1/3rd Deduction		Rs. 12,000/-
		Rs. 24,000/-
Multiplier 16 (Rs.24,000/- x 16)		Rs.3,84,000/-
Add: General Damages		Rs. 9,500/-
	Total	Rs.3,93,500/-
Less – Awarded by ld. Tribunal (Already received)		Rs.1,69,500/-
ENHANCEMENT		Rs.2,24,000/-

Accordingly, the appellants/claimants are entitled to the award of Rs.3,93,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the office of the learned Registrar General. Out of which, it is reported, the appellants/claimants already received the amount of Rs.1,69,500/- awarded by the learned Tribunal along with interest @ 9% per annum from the date of the order till payment.

The respondent no.1/Insurance Company is directed to deposit the balance amount of Rs.2,24,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants are entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.1,43,500/- (Rs.3,93,500/- – Rs.2,50,000/-) before the learned Tribunal.

The learned Registrar General will disburse the entire amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMAT 1406 of 2013, stands disposed of.

All pending applications, if there be any, also stand disposed of.

A copy of this order be forwarded to the learned Tribunal immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)