11.12. 2023
item No.5 & 6
n.b.
ct. no. 551

FMA 177 of 2017

with

IA No. CAN 3 of 2019(Old No. CAN 8197 of 2019)

The Oriental Insurance Co. Ltd.
Vs.
Nazir Noor Quadir & Ors.

With

COT 34 of 2021
+
IA No. CAN 1 of 2023
Nazir Noor Quadir & Ors.
Vs.
The Oriental Insurance Co. Ltd.

Mr. Parimal Kumar Pahari
..... for the appellant.
Mr. Snehaisis Jana
.... For the respondent.

In Re. CAN 1 of 2023.

This is an application for condonation of delay in preferring the cross objection. The report of the stamp reporter shows that there are 1029 days delay in preferring the instant cross appeal.

Heard the learned advocate for the respondent/cross objector. The Insurance Company has raised strong objection on the ground that no specific ground for delay has been assigned in the application.

Heard the learned advocates, perused the materials and also perused the body of the application being, CAN 1 of 2023. The ground of delay has specifically stated in the body of the application and the grounds are appears to be sufficient.

Accordingly, the delay in preferring the instant cross appeal is condoned. Let appeal is taken for hearing along with instant appeal.

The instant appeal has been preferred by the Insurance Company against the award dated June 17, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd FTC Court, Burdwan in M.A.C. Case No.60 of 2013.

The present respondent/cross objector have preferred the claim application before the learned Tribunal on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the offending vehicle duly insured under the policy of the Insurance Company. The claim case was contested by the Insurance Company by filing written statement.

After hearing the parties and after receiving the evidences, the learned Tribunal has awarded sum of Rs.18,80,000/- in favour of the claimants.

Being aggrieved by and dissatisfied with the instant award, the appeal has been preferred. The Insurance Company submits that the impugned judgment and award passed by the learned Tribunal is not justified. It would be revealed from the facts of the case that the deceased was a pillion rider of motor cycle. The P.W. 1 deposed that there was head on collusion between the offending Tata

Sumo and the motor cycle. The claimants did not made party, the owner or insurer of the motor cycle but only added the present appellant/Insurance Company to be the insurer of the Tata Sumo.

He further argued that there are contributory negligence on the part of the driver of the motor cycle. So, the present Insurance Company is not liable to pay the entire compensation as there was a head on collusion. Both driver of the Tata Sumo as well as the motor cycle are jointly responsible of the accident. He further argued that the income of the deceased as assessed by the learned Tribunal is not justified. The learned Tribunal has failed to appreciate the real income of the deceased only based upon the Form - 16 given by the employer the income was assessed erroneously. He further argued that the number of claimants in this case are five. Thus, learned Tribunal has deducted 1/4th towards the personal expenses, but in this case the claimant no.1 is widow, claimant no.2 is the mother, claimant no.3 is the father and claimant nos. 4 and 5 are the sister and brother of the deceased. The sister and brother are not entitled to get the compensation. Accordingly, in this case, there are only three legal claimants to get the compensation. So, considering the number of claimants, the deduction towards the personal expenses of the deceased would be 1/3rd instead of 1/4th. He further argued that the learned Tribunal has applied multiplier to be 17. The decease was

31 years at the time of the accident. So, in this case the miltiplier would be 16 instead of 17 according to **Salara Verma**.

Learned advocate for the cross objector submits that that the learned Tribunal has correctly assessed the compensation but only failed to follow the direction of the Hon'ble Supreme Court passes in **Pranay Shetty**. Thus, the award was not added the future prospects as well as the general damages. So, in this case the claimants are entitled to get the general damages and future prospects.

Heard the learned advocates. Perused the materials on record; perused the impugned judgment passed by the learned Tribunal. It appears that on the basis of said accident initially no FIR was lodged. Thereafter, one court complaint was received by the police station and on the basis of which Madhabdehi P.S. case no.3 of 2010 dated 12.1.2010 was initiated. The investigation of the police is ended in charge-sheet. On perusing the police papers and the evidence on record, it appears that the deceased was a pillion rider of motor cycle and the accident happened due to head oncollusion between the two vehicles, but the police investigation concluded that the driver of the Tata Sumo was solely responsible for the accident because the Tata Sumo was driving in a rash and negligent manner and dashed the motor cycle. Police submitted charge-sheet assailing the driver of the Tata Sumo to be solely accused of this case.

Considering the materials, it appears to me that the Insurance Company did not produce any witness to negate the claim of the claimants also the owner of Tata Sumo do not depose before the learned Tribunal. P.W. 2 was the driver of the motor cycle, but deposed that the accident was held, but he specifically stated that the Tata Sumo dashed the motor cycle. P.W. 2 i.e. the driver also received the injuries of his person.

Considering the entire materials, I think it necessary to observethat the submission of the Insurance Company regarding the contributory negligence has no leg to stand upon. However, it appears that the learned advocate for the Insurance Company has raised a correct point be observed that the claimant no.1 is the widow, claimant no.2 and the 3 are the parents of the deceased, the claimants nos. 4 and 5 of the sister and brother of the deceased. In this case, accordingly to Mohamadan Law, claimant no.1 and 2 and 3 are the only legal heirs. In their presence, the claimant nos. 4 and 5 being the “residuries” are not entitled to get any compensation. Accordingly, in this case, considering the number of the claimants to be 3 the deduction towards the personal expenses would be 1/3rd. The multiplier adopted by the Tribunal was 17. In this case, the multiplier would be 16 following the judgment of Hon’ble Supreme Court passed in **Sarala Verma** as well as the **Pranay Shetty**. The deceased was not in permanent job, and under the age of

40 years, claimants are entitled to get 40% of his actual salaried income towards the future prospects. The claimants are also entitled to get Rs.70,000/- towards the general damages. Accordingly, it appears to me that award passed by the learned Tribunal need be modified.

Thus, proper compensation of this case is hereby recusted as follows:

1. Annual income	Rs. 1,65,000/-
2. Future prospect 40%	Rs.66,000/-
	Rs.2,31,000/-
3. 1/3rd deduction personal Exp. (2,31,000-77,000)	Rs.1,54,000/-
4. Multiplier 16 (1,54,000 X16)	Rs.24,64,000/-
5. Add General Damages	Rs.70,000/-
	Rs.25,34,000/-
6. Already awarded	Rs.24,76,346/
Balance	Rs.57,654/-

The Insurance Company is directed to pay the above mentioned awarded sum along with 6% interest per annum from the date of claim application i.e. June 11, 2012 within six weeks from the date passing of this order through the officer of the learned Registrar General, High Court, Calcutta. The officer of the learned General, High Court, Calcutta shall calculate the award passed by this Court today. It appears that the Insurance company has already deposited a sum of Rs.24,76,364 by virtue of OD challan 1936 dated 7.11.2016(Rs.25,000/-) and vide OD challan no.2815 dated 12.1.2017 (Rs.24,51,346).

It appears that the deposit of huge amount has already been made by the Insurance Compan which must have carried some interest. The Office of the learned Registrar General, High Court, Calcutta is directed to disburse the same in the name of the three claimants by three equal account payee cheque. After such disbursal let it be informed to the Insurance Company by the claimants. After receiving such information, the Insurance Company shall issue the cheques through the office of the learned Registrar General, High Court, Calcutta within six weeks to comply the order of this court regarding balance award.

The claimants are directed to received the awarded sum after satisfying to the office of the learned Registrar General, High Court, Calcutta that the deficit court fees has sufficiently paid.

Accordingly, FMA 177 of 2017 and COT 34 of 2021 stand disposed of.

Connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)