29.08. 2023
item No.5
n.b.
ct. no. 551

FMA 917 of 2013
with
IA No. CAN 1 of 2023
+
CAN 2 of 2023

Malati Debi @ Pashoyan @ Pashwan & Ors.
Vs.
The National Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan roy,
.... For the appellants.
Ms. Suchirita Paul,
... for the respondents.

In Re. CAN 1 of 2023.

This application has been filed for amendment of the name of the appellant nos. 4 and 6.

It is the submission for the appellant that appellant nos.4 and 6 are the daughters of the deceased and after marriage then name has been changed as 'Asha Shamant' and 'Payel Paswan' respectively. The Aadhar Card and Voter I Card of the said appellants were also changed in their names. So, he prayed for necessary amendment.

Heard the learned advocate. Perused the application and also perused the affidavit shown by the appellants before the Executive Magistrate. Considering the same, CAN 1 of 2023 is allowed. The name of the appellant nos.4 and 6 to be amended accordingly.

In Re. CAN 2 of 2023

This application has been filed for recording the attainment of majority of the appellant no.2.

Heard the learned advocates and perused the Admit Card of appellant no.2 issued by the West Bengal Board of Higher Secondary Education, the appellant no.2 has attained majority, so, necessary recording is required in the Memo of the Cause Title by the department.

The department is directed to make out above the correction within a fortnight.

Accordingly, CAN 2 of 2023 is disposed of.

The instant appeal has been preferred against the judgment and order dated November 17, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Asansol, Paschim Bardhaman, in M.A.C. case no. 44 of 2008.

The brief fact of the case is that the present appellants being claimants filed one application under Section 166 of the M.V. Act before the learned Tribunal for getting compensation from the Insurance Company on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. The insurance Company contested the claim case by filing the written statement.

Learned Tribunal after hearing the parties as awarded the compensation of Rs.12,19,500/- in favour the claimants. The claimants preferred this appeal for enhancement of the award. The only point involved in the appeal is the quantum of compensation.

Learned advocate for the appellants submitted before this Court that the deceased was an employee of ECL. The compensation was calculated according to the pay slip issued by the ECL. At the time of calculation of the monthly income, the learned Tribunal has deducted the tax component along with the LIC premium. According the direction of the Hon'ble Supreme Court passed in **Bimal Kanwar**, the income of the deceased to be calculated less the tax component. So, in this case, the deduction towards the LIC premium per month shall not be deducted from the income of the deceased so, he prayed for necessary order.

Learned advocate for the appellant submitted that the claimants are entitled to get the future prospects as well as the general damages as per ratio by the Hon'ble Supreme Court in **Pranay Shetty.**

Learned advocate appearing on behalf of the Insurance Company strongly raised objection and submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. Learned Tribunal has considered the all materials on record and passed the impugned order. There is no perversity, thus, the impugned order cannot be set aside.

Heard the learned advocate. Perused the materials on record and also perused the pay slip standing in favour of the deceased issued by the ECL. It is true that the income of the deceased in a case of compensation under

Section 166 of the M.V. Act shall be calculated except the tax component. Here, the learned Tribunal has deducted the LIC premium. The monthly LIC premium appears in the pay slip is Rs.1,944/-. Thus, the yearly LIC premium comes to Rs.23,328/-. The early LIC premium amounting to Rs.23,328/- shall be added. Learned Tribunal has considered the yearly income of the deceased to be Rs.1,65,000/-. Thus, after adding the LIC premium, the early income of the deceased comes to Rs.1,88,328/-.

1. Annual Income	Rs.1,88,328/-
2. Add 15% future prospect	Rs.28,249.2/-
	Rs.2,16,577.2/-
3. Less 1/4th for personal Expenses.	Rs.54,144.3/-
	Rs.1,62,432.9/-
4. Multiplier 11	Rs.17,86,761.9/-
5. Add General damages	Rs. 70,000/-
	Rs18,56,761.9/-
Rounded of to	Rs.18,56,762/-
6. Less award received	Rs.12,19,500/-
7. Enhanced amount	Rs.6,37,262/-

The Insurance Company is directed to pay the balance amount amounting to Rs.6,37,262/- along with 6% interest per annum from the date of filing of the claim application i.e.10.4.2008 within eight weeks from the date of passing of this order with the office of the Learned Registrar General, High Court, Calcutta.

The appellants are liberty to receive the same according to the prevalent rules subject to the payment of ascertainment of requisite court fees.

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

(Subhendu Samanta, J.)