07.12.2023
Sl.No. 11
Ct.No. 32
Amalranjan

FMAT 768 of 2005
With
CAN 1/2007 (Old CAN 2270/2007)

Ram Narayan Yadav
Vs.
United India Insurance Co. Ltd.

Mr. Jayanta Kumar Mondal
...for the appellant
Mr. Rajesh Singh
...for the respondent/Insurance Co.

<u>Re: CAN 1/2007 (Old CAN 2270/2007)</u>

Heard learned advocates for both the parties.

The instant appeal has been filed beyond the period of limitations. It appears from the application for condonation of delay that causes shown by the appellant in paragraph nos. 5, 6, 7 and 8 are sufficient and accepted. Accordingly, the condonation of delay is hereby condoned.

The application being CAN **1/2007 (Old CAN 2270/2007)** is, thus, disposed of.

<u>Re: FMAT 768 of 2005</u>

The instant appeal has been filed by the appellant against the judgment and award dated 20.09.2003 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Additional District and Session Judge at Alipore, South 24

Parganas in MACC No. 148/2000 thereby the learned tribunal allowed the claim application on contest against OP No. 2/insurance company and ex parte against the opposite party no. 1 /owner of the offending vehicle without order as to costs to the tune of Rs. 51,000/- and the same amount is directed to pay within three months from the date of passing of the judgment and order. In default, the awarded sum shall carry interest at the rate of 7.5% per annum from the date of passing the judgment till its realisation.

It is submitted by the learned advocate appearing on behalf of the appellant that only two points are involved in this appeal and same is required to be decided by this court.

Firstly, the learned tribunal ought to have considered the minimum income of Rs. 2,500/- per month of the victim, who was a driver prior to the accident.

Secondly, the interest should be calculated from the date of filing of the application as per the principles laid down by the Supreme Court in catena of judgments.

On the other hand, learned advocate appearing on behalf of the insurance company submits that there is no dispute regarding the facts of accident, percentage of disability and multiplier. The learned tribunal has rightly decided the case and income was taken as Rs. 15,000/- per annum as Notional Income when the claimant fails to prove his actual income. Therefore, this case is liable to be dismissed.

Heard both sides and on perusal of the judgment and order, it appears that the claimant has exhibited the driving licence to prove the victim was driver at the time of accident. He used to earn Rs. 3,000/- per month prior to his death. However, the claimant has failed to produce any documentary evidence to substantiate his income as Rs. 3,000/- per month. However, it is clearly proved that he was a driver so it can be accepted that in the year 2003 his minimum income would have been taken Rs. 2,500/- as minimum income. It is not that he was not working as driver at that point of time when the accident was took place.

Accordingly, it can be safely accepted the contention of the appellant that Rs. 2,500/- may be taken as minimum income of the victim as such allowed a sum of Rs. 2,500/- per month as his income.

Furthermore, regarding the interest part it is the clear provision in the Act to grant interest.

Now it is settled position that interest should be calculated from the date of filing of the application because it is accretion of fund and Hon'ble Supreme Court laid down the principle regarding interest. However, the learned tribunal did not consider the issue of interest calculation on the awarded amount from the date of filing claim application. Learned tribunal only considered the issue of interest subject to condition that the awarded amount, if not paid within three months then the interest shall be carried at the rate 7.5% per annum.

Keeping in mind the above observation, the calculation of compensation is assessed as follows:

<u>CALCULATION OF COMPENSATION</u>

Monthly Income	Rs. 2,500/-
Annual Income (Rs. 2,500/- X 12)	Rs. 30,000/-
20% Disability	Rs. 6,000/-
Multiplier- 17 (Rs. 6,000/- X 17)	Rs. 1,02,000/-
Less Awarded Amount	Rs. 51,000/-
Total Enhancement compensation	Rs. 51,000/-

Thus, the appellant/claimant is further entitled to get enhanced compensation amount comes to Rs. 51,000/= (Rupees Fifty One Thousand Only) interest @ 6% per annum shall carry on total awarded amount of Rs. 1,02,000/- from the date of filing of the claim application till final payment.

The respondent-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 51,000/= together with interest as indicated above by way of cheque before the office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 20.09.2003.

Judgment and award dated 20.09.2003 is hereby modified to the aforesaid extent.

Accordingly, the appeal being **FMAT 768 of 2005** is allowed.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Ajay Kumar Gupta, J.)