

S/L 60
03.10.2023
Court No.32
SD

FMAT 315 of 2020
With
CAN 1 of 2022

Janaki Bhuiya @ Janaki Bhunja & Ors.
Vs.
Oriental Insurance Company Ltd. & Anr.

Mr. Ashique Mondal

...for the Appellants.

Mr. Sanjay Paul

...for the Respondent/Insurance Company.

CAN 1 of 2022:-

This is an application filed under Section 173(1) of the Motor Vehicles Act, 1988 seeking for condonation of delay of 37 days in preferring the instant appeal. Ld counsel for the appellants referred paragraph Nos. 5 to 10 of the said application showing the reasons for delay in filing the appeal beyond the period of limitation as prescribed under Section 173 (1) of the Motor Vehicles Act, 1988. He prays for condonation of delay.

On the other hand, learned advocate appearing on behalf of the insurance company raised objection to such prayer.

Heard both sides and on perusal of the application, it appears that the cause shown by the appellants are satisfactory and accepted. Accordingly, delay in filing the instant appeal is condoned.

CAN 1 of 2022 is, thus, disposed of. Appeal is formally admitted and registered.

FMAT 315 of 2020:-

Learned advocates appearing on behalf of both the parties submit that the instant appeal may be disposed of only on the basis of decision passed by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & Ors.** Reported in **(2017) 16 SCC 680**.

Informal paper book filed by the learned advocate for the appellants is taken on record. The record is taken up for hearing appeal.

The appellants/claimants have filed this instant appeal against the judgment and award dated November 5, 2019 passed by learned Additional District Judge-cum-Motor Accident Claims Tribunal, 6th Court, Paschim Medinipur in MAC Case No.263 of 2016, thereby the learned Judge allowed the claim application filed under Section 166 of the Motor Vehicles Act, 1988 and awarded a compensation to the tune of Rs.9,34,000/- together with interest at the rate of 6% per annum over the said awarded amount from the date of filing of claim case till realization and the said compensation amount was required to be paid within two months from the date of judgment and award. In

default, interest will carry 9% per annum over the entire amount till realisation of the entire compensation amount. The said award was passed on contest against the respondent no.1/insurance company and ex parte against other respondent/ owner of the offending vehicle.

The background of filing this instant appeal is to the effect that on 22.4.2015 at about 8:45 p.m. while victim Samar @ Nera Bhuiya was coming to his house by riding motorcycle from Keranichati through Raniganj-Midnapore road (NH 60) on his left side of the road and when he reached near Keranichati Cannel, at that material point of time, one another motorcycle bearing no. WB 34P 2191 coming from the side of Bhadutola with very high speed , rash and negligent manner suddenly dashed the victim as a result, the victim suffered serious injury on his head, face and all over the body. He was shifted to Midnapur Medical College and Hospital and thereafter he was referred to NRS Medical College and Hospital and finally he succumbed to his injury on 08.7.2015. Due to such death, the claimants have filed a claim case under Section 166 of the Motor Vehicles Act, 1988 before the Ld. Tribunal.

Learned advocate appearing on behalf of the appellants submits that there is no dispute regarding the findings of the Tribunal regarding involvement of the vehicle, rash and negligent driving of the driver of the

offending vehicle as well as the death of the victim due to injuries suffered by him due to accident, which was taken place on 22.4.2015 at about 8:45 p.m.

It is further submitted that the awarded amount has already been paid by the insurance company to the claimants. The only dispute raised by the learned advocate for the appellants that the Tribunal did not consider or add the amount of future prospects on the deceased's income as well as not added enhanced amount @ 10% of the general damages after expiry of every three years on the basis of proposition laid down in *Pranay Sethi's* case. Therefore, the amount of compensation is required to be enhanced by adding future prospects as well as 10% on the general damages as per *Pranay Sethi's* case.

On the other hand, learned advocate appearing on behalf of the respondent/insurance company submits that the Tribunal has rightly passed the award and the said award has already been disbursed to the claimants by the Insurance Company. Therefore, there is no need to interfere with the findings as well as compensation amount as awarded by the Tribunal.

Having heard the submissions of both the parties and on perusal of the materials available on record, it appears that there is no dispute regarding the accident occurred due to rash and negligent driving of the driver of the offending

vehicle and involvement of the offending vehicle. Furthermore, the claimant died due to the injury suffered by the said accident. It is also not disputed about the assessment of income of the victim as well as selection of multiplier by the Ld. Tribunal while assessing the compensation amount.

The Tribunal has assessed the general damages as Rs.70,000/- in total towards loss of estate, loss of consortium and loss of funeral expenses. However, no enhancement made on the General damages as per proposition laid down in *Pranay Sethi's* case. The Tribunal also not considered or added the compensation towards future prospect, which is required to be added in the instant case, as the victim was less than 40 years on the date of accident. Hence, the instant appeal filed by the appellants seeking enhancement of the compensation amount.

In view of aforesaid facts as well as Judgment passed in **National Insurance Company Limited vs. Pranay Sethi & Ors.** Reported in **(2017) 16 SCC 680**, 40% should be added as future prospect on the annual income of the deceased but 10% should not be added with the general damages, that is on Rs.70,000/= because the Ld. Tribunal has decided the claim application on 5th November, 2019. It is within three years from the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court has decided the

Pranay Sethi's Case on 31st October, 2017 and directed to be enhanced @ 10% on General Damages as awarded in the said judgement in expiry of every three years. Accordingly, Ld. Tribunal has assessed the General damages as 70,000/- correctly. Thus, it does not requires any interference under the head of General damages as three years have not been expired on the date of Judgment and Award passed by the Ld. Tribunal.

Accordingly, keeping in view the above facts and circumstances, the award passed by the Tribunal below is modified and recalculated as follows:-

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly income	6,000.00
Annual income (6000X12)	72,000.00
less : 1/3 personal expenses	<u>18,000.00</u>
	54,000.00
Add 40% future prospect	<u>21,600.00</u>
	75,600.00
Multiplier of 16 (75,600 x 16)	12,09,600.00
Add: General damages	<u>70,000.00</u>
	12,79,600.00
Less: amount already received	<u>9,34,000.00</u>
Total compensation	<u>3,45,600.00</u>

Thus, the appellants/claimants are further entitled to get enhanced compensation amount to the tune of Rs. 3,45,600/= (Rs. 12,79,600/- minus Rs. 9,34,000/- (compensation amount already awarded by the Ld. Tribunal) which shall carry interest @ 6% per annum on enhanced amount of compensation amount from the date of filing of the claim application i.e. from 21.08.2015 till final payment.

It is submitted on behalf of the Insurance company that the awarded amount of Rs. 9, 34,000/= together with interest has already been received by the claimants.

Therefore, the respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 3,45,600/= (Rupees three lakhs forty five thousand six hundred only) and the 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 enhanced amount and interest as indicated above, shall release the amount in favour of the appellants /claimants 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 judgment and award dated November 5, 2019.

The impugned judgment and award of the learned Tribunal dated 05.11.2019 is modified to the extent only as aforesaid.

With the above observations, the instant appeal stands disposed of.

Let a copy of this order along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

Urgent photostat copy of this Judgment and Order be given
to the parties upon compliance of all legal formalities

(Ajay Kumar Gupta, J.)