12.09.2023
Item No.15
Ct. No.551
S.A.

FMA 766 of 2011
with
CAN 3 of 2015
(Old CAN No. 107 of 2015)
CAN 4 of 2023

Noni Barman & Ors.
-vs-
The United India Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
…for the appellants
Mr. Parimal Kumar Pahari
…for the respondent no.1

In Re.: CAN 4 of 2023

This is an application for expunging the name of the appellant no.2. It is the submission of the learned advocate for the appellants that during the pendency of the appeal, the mother of the deceased i.e. appellant no.2 has expired. So, her name may be expunged from the memo of the cause title of appeal.

Considering the submission of the leaned advocate for the appellant, CAN 4 of 2023 is considered and allowed, the name of the appellant no.2 is hereby expunged the cause title of the memo of the appeal.

The Department should do the necessary correction within fortnight.

FMA 766 of 2011

The instant appeal has been preferred against the judgement and award dated 15th December, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, Malda in MAC Case No. 85 of 2009 under Section 163A of M.V. Act.

The brief facts of the case is that the present appellants being the claimants filed one application before the learned Tribunal under Section 163A of the M.V. Act for getting compensation 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.

A very short point is involved in the appeal. The claimants have preferred the application before the learned Tribunal for getting compensation to the tune of Rs.1,60,000/- only. The income of the deceased was initially stated in the claim application was Rs.1800/- per month but subsequently, the same was amended to the tune of Rs.3000/- per month.

Learned Tribunal is of view that the calculation of compensation under schedule II of Section 163A of M.V. Act is not possible because the claimants have only claim Rs.1,60,000/-. Though they are entitled to get the more, so he proceeded to award a lumpsum amount of Rs.1,69,500/-.

The appellant submits that in this case the compensation may be awarded on the basis of structure formula under Section 163A of M.V. Act.

Learned advocate for the Insurance Company Mr. Pahari submits that the learned Tribunal has awarded compensation according to the prayer of the claimants. The amendment was made regarding the income of the deceased during the pendency of the proceeding but the claim amount was not enhanced. So the learned Tribunal has nothing to consider the more compensation amount. Thus, there is no error in the impugned award.

Heard the learned advocates. Perused the materials on record. Also perused the paper book including the impugned award. It appears to me that this is an application under Section 163 A of the M.V. Act wherein the claimants claimed an award of Rs.1,60,000/-. The learned Tribunal has awarded the same amount without adopting the structure formula according to the schedule II of Section 163A of M.V. Act.

It appears that learned Tribunal has committed error for not following structure formula. In a case of compensation under Section 163A of M.V. Act the learned Tribunal must have to be awarded the just and proper compensation.

Considering the just and proper compensation of the case, the structure formula of Section 163A of

M.V. Act has to be followed . At this juncture I think it necessary to modify the impugned award passed by the learned Tribunal by adopting the structure formula according to the schedule II of Section163A of M.V. Act.

For just and proper compensation of this case the monthly income of the deceased is calculated to Rs.3000/-. The yearly income comes to Rs.36,000/-. After 1/3rd deduction towards the personal expenses the yearly dependence comes to Rs.24,000/-. The deceased died at the age of 42 years. So, according to the 2nd schedule of Section 163A of M.V. Act the applicable multiplier would be 15. After adopting the multiplier in this case the award comes to Rs.3,60,000. The claimants are also entitled to get the general damages to the tune of Rs.9500/-. After adding all heads the award comes to Rs.3,69,500/- The claimants have already received Rs.1,69,500/-. The balance amount comes to Rs.2,00,000/-.

The Insurance Company is directed to pay the balance compensation amount of Rs.2,00,000/- to the claimants along with 6% interest per annum from the date of filing of the claim application i.e. from 15.05.2009 within eight weeks from the date of passing of the order with the office of the learned Registrar General of the High Court, Calcutta. The claimants are entitled to get the same in equal shares subject to ascertaining of payment of requisite court fees.

FMA 766 of 2011 is disposed of.

The connected CAN application, if any, is also disposed of.

The LCR be sent down forthwith to the office of the learned Tribunal.

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

(Subhendu Samanta, *J.*)