06.12. 2023
item No.23
n.b.
ct. no. 551

FMAT(MV) 208 of 2023

with

IA No. CAN 1 of 2023
+
CAN 2 of 2023

United Insurance Co. Ltd.
Vs.
Samita Ghosh & Ors.

Mr. Rajesh Singh,
.....for the appellant.
Mr. Saidur Rahaman,
.... For the respondent.

In pursuance to the order of this court dated 28.4.2023, the insurance company has deposited the entire awarded sum amounting to Rs.7,82,081/- vide OD challan no.475, OD dated 16.5.2023.

Considering the compliance made on behalf of the insurance Company, the interim order of stay passed by this Court on the earlier occasion is hereby made absolute and be extended till the disposal of the instant appeal.

Accordingly, CAN 1 of 2023 is disposed of.

In Re. CAN 2 of 2023

This is an application for condonation of delay of 116 days in preferring the instant appeal.

Considering the submission, it appears to me that the ground as mentioned in the body of the application, it appears to be sufficient. Accordingly, the delay in preferring the instant appeal is hereby condoned.

Accordingly, CAN 2 of 2023 is disposed of.

The appeal is admitted.

In Re. FMAT(MV) 208 of 2023

Mr. Rahaman, learned advocate is appearing on behalf of respondent nos.1 to 3. The respondent no.4 is the owner of the offending vehicle who did not contest the matter before the learned Tribunal. Accordingly, the notice of appeal upon the respondents is dispensed with.

Learned advocate appearing on behalf of the parties submits that the appeal can be disposed of without calling for the record from the office of the learned Tribunal. Considering the submission of the parties, calling for LCR is dispensed with for the time being.

Let the appeal be taken up for hearing.

Heard the learned advocates and perused the impugned judgment and award passed by the learned Tribunal, the brief fact of the case is that the present claimants are the fateful parent and brother of the deceased, who died in the road traffic accident due to rash and negligent driving of offending vehicle duly insured by the insurance company.

The claimant has preferred an application under Section 163A of the M.V. Act before the learned Tribunal. After hearing the parties, learned Tribunal has awarded the sum of Rs.5,68,960/- in favour of the claimants.

Being aggrieved by and dissatisfied with the said award, the appellant has preferred this instant appeal.

Mr. Singh submits that assessment of compensation by the learned Tribunal is itself erroneous. The learned Tribunal has assessed the compensation by virtue of the decision of the Hon'ble Supreme Court passed in **Sarala Verma** as well as **Pranay Shetty,** but the observation of the Hon'ble Supreme Court in **Sarala Verma** and **Pranay Shetty** is only applicable in a case under Section 166 of the M.V. Act. This is a case under Section 163A of the M.V. Act in which no fault liability is the principle to be proved. Learned Tribunal has erroneously applied its mind and allowed the future prospect and allowed the general damages of Rs. 70,000/-. In a case under Section 163A of the M.V. Act, the said component cannot be added in the claim compensation.

Learned advocate appearing on behalf of the claimants submits that the observation of the learned Tribunal following the decision of the **Pranay Shetty** actually not applicable in this case under Section 163 of the M.V. Act.

Heard the learned advocates and perused the judgment itself. It appears that in computing the compensation, the learned Tribunal has committed an error and mis-guided himself in assessing the compensation under the direction of Hon'ble Supreme Court passed in **Pranay Shetty**.

In my view, the observation of the Hon'ble Supreme Court in **Pranay Shetty** is not applicable in case under

Section 163A of the MV. Act. Accordingly, the award passed by the learned Tribunal need be modified. The just and proper compensation is hereby assessed as follows:

1. Monthly income	: Rs.3,300/-
2. Annual income	: Rs.39,600/-
3. Less 1/3rd personal exp.	: Rs.13,200/-
	Rs.26,400/-
4. Multiplier "17" (26,400 X 17)	Rs.4,48,800
5. Add General Damages	Rs.4,500/-
Total compensation	: Rs.4,53,300/-

After calculation the award comes to Rs.4,53,300/-. The Insurance Company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application i.e. from May 16, 2016. It appears that the Insurance Company at the time of filing of the instant appeal has made the statutory deposit of Rs.25,000/- and thereafter, has again deposit the entire award along with interest amounting to Rs.7,82,081/- The deposited amount must have carried some interest.

The office the learned Registrar General, High Court Calcutta is directed to calculate the award along with interest and disburse the same in the name of the claimant according to the proposition made by the learned Tribunal in the impugned award subject to ascertainment of payment of deposit court fees. It appears from the impugned award that court fees has not been paid. The

Registrar General shall ascertain the same before issuing the cheque.

After such disbursement, if it appears that there some residue in the account of the Insurance Company, then the said remaining along with interest shall be returned back to the Insurance Company according to the prevalent rules.

Accordingly FMAT(MV) 208 of 2023 is 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.)