04.09. 2023
item No.3
n.b.
ct. no. 551

FMA 1087 of 2010
with
IA No. CAN 1 of 2010(Old No. CAN 5258 of 2010)
+
CAN 2 of 2014(Old No. CAN 8049 of 2014)
+
CAN 3 of 2023
+
CAN 4 of 2023

New India Assurance Co. Ltd. & Anr.
Vs.
Sulata Rani Bera & Ors.

With
COT 46 of 2023

Sulata Rani Bera & Ors.
Vs.
New India Assurance Co. Ltd. & Anr.

Ms. Gopa Das Mukherjee,
.....for the appellant(in FMA 1087 of 2010)
Mr. Krishanu Banik,
Mr. Tathagata Banik,
.....for the respondent.
.....for the appellant(In COT 46 of 2023)

In Re. CAN 4 of 2023.

This is an application for amendment filed by the respondent on the ground that the respondent no.2 was minor at the time of filing of the instant appeal and during the continuation of the instant appeal she became major. So, necessary noting is required to be made in the cause title of the Memo of the appeal. Further, the respondent no.3 has expired on 5.7.2011, thus, she being the mother of the deceased, her name be deleted in the cause title of the Memo of the Appeal.

CAN 4 of 2023 is allowed with a direction that the department shall make out the corrections as mentioned in the paragraph 2 of the application in the cause title of the Memo of the appeal within a fortnight.

In Re. FMA 1087 of 2010

The instant appeal has been preferred against the judgment and award dated May 7, 2010 passed by the learned Tribunal, 3rd Court. Alipore, South 24 Parganas in M.A. C. case No. 114 of 2009.

The brief fact of the case is that the respondent being the claimants filed an application under Section 166 of the Motor Vehicles Act before the learned Tribunal for getting compensation from the Insurance Company on the ground that their predecessor 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 matter before the learned Tribunal.

After hearing the parties the learned Tribunal has awarded a sum of Rs.3,98,000/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award, the Insurance Company/the present appellant has preferred this appeal.

Learned advocate for the Insurance Company submitted that the impugned award passed by the learned Tribunal is erroneous. The learned Tribunal was not gone through the facts and circumstances of the present case and came to an erroneous finding. The evidences and the materials in the claim application shows that the deceased was a gratitude passenger of the offending vehicle. The policy does not covered for the gratuitous passenger. The owner of the vehicle had carried that the gratitude passenger in the goods vehicle. The D.W. 1 and D.W.2 appeared before the learned Tribunal to prove that the offending vehicle was goods vehicle and the deceased was gratitude passenger. So, she argued that the Insurance Company has no liability to pay the compensation. She therefore, further argued that the learned Tribunal has made error for fixing the liability of the Insurance Company to pay the compensation. So, she prayed for necessary order for setting aside the impugned order.

Learned advocate appearing on behalf of the claimant submitted before this court that the impugned award suffers no illegality. One COT /cross appeal was preferred by the claimants to have an order by virtue of the Constitution Bench of Hon'ble Supreme Court in **Pranay Shetty** in respect of future prospect and general damages which was not at all considered by the learned Tribunal.

He further argued that the learned Tribunal has assessed the compensation of fixing the monthly income of the deceased to be Rs.2,600/-, so, the income of the deceased should be considered to be at lease Rs.3,000/- per month.

Heard the learned advocate. Perused the materials on record and perused the LCR as well as the impugned judgment, it appears that the deceased was gratitude passenger. Thus, the Insurance Company has no liability to pay the compensation. In such view, the impugned award passed by the learned Tribunal is erroneous. However, by virtue of the decision of the Hon'ble Supreme Court passed in **Baljit Khaur** and **Saran Singh**, the Insurance Company may have no liability to pay the compensation when the deceased was gratitude passenger but as the present claimants are the third party and the offending vehicle was well covered under the policy of the Insurance Company, the Insurance Company may be ordered to pay the compensation to the claimants and they may recover the sum from the owner of the offending vehicle. By virtue of the said principle laid down by the Hon'ble Supreme Court in **Baljit Kaur** and **Swaran Singh**. I thing it is necessary, the impugned award need be modified and the Insurance Company may be directed to pay the compensation and is the same way they are at liberty to recover the compensation amount from the owner of the offending vehicle.

In considering the income of the deceased, it was mentioned in the claim application that the deceased was fish seller; he used to earn Rs.5,500/- per month. Some documentary evidences were produced before the learned Tribunal to prove the income but they appear to be not convincing to the learned Tribunal. Thus, he adopted the income of the deceased to be Rs.2,600/-.

Learned advocate for the appellant submitted before this Court that the deceased died in the year 2005, so, the income of the deceased can be considered to be Rs.3000/- per month.

In considering the observation of the Division Bench of this Court in **Bilasini Mondal Vs. National Insurance Co. Ltd. reported in 2003(2) TAC 435** the Division Bench of this Court in case of a fish seller who don't have a necessary document to prove his income, the monthly income was considered to be Rs.3,000/-. I perused the observation of the Hon'ble Division Bench of this Court passed in **Bilasini Mondal Vs. National Insurance Co. Ltd. and Anr.(supra)**, it appears to me that likethe case of **Bilisini Mondal** a fish seller was succumbed to his injury in a road traffic accident and Hon'ble Division Bench has considered his income to Rs.3,000/- per month. The observation of the Division Bench of this Court is already there in respect of a death of fish seller in this case, I think it necessary the same may be adopted. Accordingly, to the income of the deceased is fixed Rs.3,000/- per month by virtue of the decision of Hon'ble Supreme Court passed in **Bilasini Mondal**. It further appears that the deceased 28 years at the time of accident, thus, the applicable multiplier would be 17 instead of 18.

By virtue of decision of constitution bench of Hon'ble Supreme Court passed in **Pranay Shetty** the claimant are also entitled to get the general damages and future prospect.

Considering the above aspect, it appears to me that the impugned award passed by the learned Tribunal need be modified. For just and proper compensation of this case the award is hereby recusted below:

1. Monthly income be assessed as	Rs.3,000/-
2. Annual income be assessed as (Rs.3000/- X 12)	Rs.36,000/-
3. Future Prospect 40%	Rs.14,400/-
4. Total Income	Rs.50,400/-
5. Deduction 1/3rd of personal Expenses(50,400-16,800)	Rs.33,600/-
6. Use of multiplier as per age 17	Rs.5,71,200/-
7. General damages	Rs.70,000/-
Total	**Rs.6,41,200/-**

Insurance Company is directed to pay the above mentioned award amount to the claimant through the office of Learned Registrar General, High Court, Calcutta along with 6% interest per annum from the date of filing of the claim application i.e. from April 20, 2006. On such deposit, the claimants are at liberty to receive the same in equal shares through two account pay cheques subject to the ascertainment o payment of requisite court fees.

Accordingly, FMA 1087 of 2010 is disposed of.

Connected applications, if any, are also 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.)