

26.09.2023
Item No. 29
BR

FMAT 829 of 2019
With
CAN 1 of 2019 (Old No. CAN 8668 of
2019)

Subhankar Sarkar & Ors.
-vs-
The United India Insurance Company
Ltd. & anr.

Mr. Saidur Rahaman
.... For the appellant

Mr. Rajesh Singh,
Ms. Sucharita Paul
..... for the insurance co.

Affidavit of service filed in Court
today is taken on record.

Mr. Rahaman, learned advocate
appears for the appellants and Mr. Singh
and Ms. Paul, learned advocates appear
for the respondent No.1/ insurance
company.

CAN 1 of 2019

Mr. Rahaman, learned advocate
for the appellants moved an application
for condonation of delay of 120 days. He

also refers paragraph Nos. 2 and 3 of the said application to show the causes for not filing the appeal within time as prescribed under Section 173 (1) of the Motor Vehicles Act, 1988. He prays for condonation of delay.

On the other hand, Mr. Singh raised objection to such prayer.

Heard both sides and on perusal of the application, this Court finds the cause shown by the appellant is sufficient, satisfactory and accepted. Hence, delay in filing appeal stands condoned.

Accordingly, **CAN 1 of 2019** is, thus, disposed of.

FMAT 829 of 2019

The appellant filed the instant appeal against the judgement and award

dated 24th January, 2019 passed by Motor Vehicles Claims Tribunal , 5th Court, Malda in MAC case No. 300 of 2017, thereby the learned Tribunal has awarded a sum of Rs. 2,25,500/- together with interest @ 7% per annum from the date of filing of this case i.e. on 27.11.2017 till the date of realisation from respondent No.1/Insurance company under Section 163A of the Motor Vehicles Act. Contention of the appellants is that the compensation amount awarded by the Ld. Tribunal is less, which requires to be enhanced.

The backgrounds of the instant case is that accident took place on 21st May, 2016 while victim was standing in front of the house of Shyamal Mondal, at that material point of time one motorcycle bearing No. WB-66T/2923 was coming from Malda with high speed and with negligent manner, dashed the victim Ramprasad Sarkar. As a result he sustained severe injuries. Victim

was removed to Malda Medical College and Hospital. An FIR was registered against the driver of the offending vehicle vide Malda P.S. Case No. 282 dated 22nd May, 2016 under Section 379/304A of Indian Penal Code. After scanning and appreciation of evidence adduced by the parties, the Ld Tribunal came to the final conclusion that the offending vehicle No. 66T/2923 was involved in the said accident. Accident was occurred on 21st May, 2016 and ultimately the victim succumbed to his injuries.

This is a case filed under Section 163A of the Motor Vehicle Act, 1988, in which it does not require to prove any rash and negligent driving of the vehicle. The Act provides the claim application filed under Section 163A of the Motor Vehicles Act falls under no fault liability and it is wholly based on structural formula as stipulated in Schedule II of the Motor vehicles Act, 1988.

However, Appellants raised only one issue regarding serious error committed by the Tribunal while selecting the multiplier as 9 though it ought to be 11 as per the age of the victim. If multiplier would be taken as 11 the compensation amount would be more.

On the other hand, learned advocate on behalf of the respondent No.1 opposed the prayer and submits the Tribunal has rightly assessed the compensation to the claimants. As such there is no need to interfere with the judgment and award passed by the Tribunal.

Having heard the submissions of both sides and on perusal of the entire record, the only issue is to be considered as follows:

Whether multiplier selected by the Tribunal is correct or not?

Manner of selection of multiplier is well settled by the Hon'ble Supreme Court in **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**¹ That was subsequently affirmed by the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**²

It appears from the judgment and award dated 24th January, 2019 that year of birth of the victim was recorded as 1962. Accident took place on 21st May, 2016. So, if we calculate, the actual age would be 54 years on the date of accident. It comes within the age group of 51 to 55 years and for that actual multiplier would be 11 in view of the aforesaid judgments.

In view of the aforesaid discussion, the appellant is entitled to the following amounts.

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Annual Income (Rs. 3000/- X 12)	Rs. 36,000/-
Total loss of Dependency Rs. 36,000/- X 11 (Multiplier)	Rs. 3,96,000/-
Less: 1/3 rd personal expenses of the victim(Rs. 1,32,000/-)	Rs. 2,64,000/-
Add: Rs. 9,500/- General Damages	Rs. 9500/-
Total compensation	Rs. 2,73,500/-

Thus, the appellants/claimants are further entitled to get enhanced compensation amount comes to Rs. 48,000/= (Rs. 2,73,500/- minus Rs. 2,25,500/- compensation amount awarded by Ld. Tribunal) which shall carry interest @

6% per annum from the date of filing of the claim application i.e. from 27.11.2017 till final payment on total amount.

The respondent-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 48,000/= 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 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 judgement and award dated 24th January, 2019.

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

Consequently, application being CAN 1 of 2019 (Old No. CAN 8668 of 2019) is also thus disposed of.

The impugned judgment and award of the learned Tribunal dated 24th January, 2019 is modified to the aforesaid extent only. No order as to costs.

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 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.)