05.07.2023
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMAT 869 of 2017
With
CAN 1 of 2017 (Old No. CAN 9476 of 2017)
CAN 2 of 2017 (Old No. CAN 9478 of 2017)
CAN 3 of 2023

Bajaj Allianz General Insurance Company Ltd.
-Vs-
Kalpana Gorai @ Kalpana Garai & Ors.

Mr. Rajesh Singh
... for the appellant-insurance company

Mr. Subrata Bhattacharyya,
Ms. Shipra Santra
...for the respondent No. 1-3–Claimants

Re: CAN 2 of 2017 (Old No. CAN 9478 of 2017)

This is an application for condonation of delay in preferring the present appeal.

Mr. Rajesh Singh, learned advocate for the appellant-Insurance Company submits that for completion of official formalities, there has been delay in preferring the appeal. He seeks for condonation of delay of 165 days in preferring the appeal.

Mr. Subrata Bhattacharyya, learned advocate for the respondent nos. 1 to 3-claimants leaves the matter to the discretion of the Court.

It is found from the report of the Additional Stamp Reporter dated 25th August, 2017 that there is delay of 165 days in preferring the appeal. The cause shown is sufficient to condone such delay. Accordingly, delay of 165 days in preferring the appeal stands condoned.

The application for condonation of delay being **CAN 2 of 2017 (Old No. CAN 9478 of 2017)** stands disposed of.

Accordingly, the appeal is formally admitted and registered.

Re: FMAT 869 of 2017

With the consent of the parties, the present appeal is treated in the day's list under the heading 'hearing' for disposal.

This appeal is preferred against the judgment and award dated 25th November, 2016 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track Court, Durgapur, Burdwan in MAC Case No. 77 of 2012 (Old No. 162 of 2010) granting compensation of Rs. 3,28,500/- together with interest in favour of the respondent no.1 under Section 163A of the Motor Vehicles Act, 1988.

With the consent of the learned advocates for the respective parties, preparation of informal paper books and calling for of lower court records are dispensed with.

Since the respondent no. 4 did not contest the claim application, service of notice of appeal upon the said respondent is dispensed with.

The brief fact of the case is that on 5th June, 2010 at about 3.00 a.m. while the victim was proceeding to his house as a pillion rider on motorcycle bearing registration no. WB-40QG/0927 and when they reached near Top Line on NH-2 at that time the offending truck bearing registration no. WB-39A/0887 in a rash and negligent manner dashed the said motorcycle resulting in injuries to both the rider as well as the victim. Both the injured were shifted to hospital. The victim succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the parents and unmarried sister filed application for compensation of Rs. 4,48,800/- under Section 163A of the Motor Vehicles Act, 1988.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 3,28,500/- together with interest in favour of the claimant-respondent no. 1, mother of the deceased.

Being aggrieved by and dissatisfied with the impugned judgment and award, the appellant-insurance company has preferred the present appeal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that there is delay in lodging of the FIR, which raises doubt with regard to the claim of the claimants. He further submits that as per 2nd Schedule of the Motor Vehicles Act, the multiplier should be 17 instead of 18 since at the time of accident, the victim was more than 24 years of age. In the light of the aforesaid submissions, he prays for modification and/or setting aside the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Subrata Bhattacharyya, learned advocate for respondent nos. 1 to 3-claimants submits that all the aspects pressed into service in this appeal have been dealt with by the learned Tribunal which does not call for interference. He also submits that as per the 2nd Schedule of the Act, deduction towards personal living expenses of the deceased should be 1/3rd instead of 1/2 adopted by the learned Tribunal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether delay in lodging the FIR *per se* affected the claim of the claimants; *secondly*, whether multiplier to be adopted in this case should be 17 instead of 18 adopted by the learned Tribunal and *lastly*, whether deduction towards personal living expenses of the deceased should be 1/3rd instead of 1/2 adopted by the learned Tribunal.

With regard to the first issue, it is found that there is delay of 11 days in lodging the FIR. Delay *per se* does not affect the claim unless such delay has led to fabrication or engineering of FIR. Precisely there is nothing on record of any fabrication or engineering of the FIR. The learned Tribunal has considered such aspect and discounted the ground of delay in lodging of the FIR.

So far as the multiplier is concerned, it is found that at the time of accident admittedly the victim was more than 24 years of age. Thus, following the 2nd Schedule of the Act, the multiplier should be 17 instead of 18 adopted by the learned Tribunal.

With regard to the last issue, it is found that as per the 2nd Schedule of the Act, deduction towards personal living expenses of the deceased should be 1/3rd instead of 1/2 adopted by the learned Tribunal.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

<u>Calculation of Compensation</u>

Monthly income	Rs. 3,000/-
Annual Income (Rs. 3,000/- x 12)	Rs.36,000/-
Deduction: 1/3rd towards personal and living expenses	Rs. 12,000/-
	Rs. 24,000/-
Multiplier 17 (Rs. 24,000/- x 17)	Rs. 4,08,000
General Damages	Rs. 4,500/-
Total amount	Rs. 4,12,500/-

The learned Tribunal has granted compensation in favour of respondent no. 1, mother of the deceased, only.

Thus, the respondent no. 1 is entitled to compensation of Rs. 4,12,500/- together with interest @ 7% per annum (as granted by the learned Tribunal) from the date of filing of the claim application till payment. It is found that the appellant-insurance company has deposited statutory amount of Rs. 25,000/- vide OD Challan No. 1734 dated 25th October, 2017 and another sum of Rs. 4,68,228/- vide OD Challan No. 2120 dated 30th November, 2017 with the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount.

The appellant- insurance company is directed to deposit the balance amount of compensation of Rs.84,000/- together with interest as indicated hereinabove by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The respondent no. 1 is directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation together with interest, the learned Registrar General, High Court, Calcutta shall release the entire compensation amount in favour of the claimant-respondent no. 1, upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J**.)