08.09. 2023
item No.4
n.b.
ct. no. 551

FMAT 1347 of 2009
with
IA No. CAN 1 of 2009(Old No. CAN 9049 of 2009)
+
CAN 2 of 2023

Smt. Doli Kodali & Anr.
Vs.
The New India Assurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy,
.....for the appellants
Mr. Sanjoy Paul,
.....for the respondents.

In Re. CAN 2 of 2023

This is an application for amending name of the appellant, namely, Smt. Doli Kodali.

Learned advocate for the appellant submits that the wife of the deceased, namely, Doli Kokali(appelant no.1) died during the pendency of the instant appeal. There are no other issues or heirs of appellant no.1. Thus, her name need be expunged from the Memo of the Cause Tittle of the appellant.

Heard the learned advocate and perused the copy of the death certificate. Considering the same, the name of appellant no.1 be exchanged from the memo of the Cause Title of the appeal.

The department to do the necessary correction.

Accordingly, the Can 2 of 2023 is disposed of.

In Re. FMAT 1347 of 2009

The instant appeal has been preferred against the judgment and award dated August 5, 2006 passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Howrah in M.A. C. case No. 413 of 2001.

The present appellant being the claimant preferred one application before the learned Tribunal under Section 166 of the M.V. Act for getting compensation on the ground that the husband of appellant no.1/the son of appellant no.2 was died in the 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 matter was contested by the Insurance Company before the learned Tribunal. The learned Tribunal after hearing both the parties has awarded sum of Rs.2,82,000/- in favour of the claimants

Being aggrieved by and dissatisfied with the impugned award, the present appellants hav e preferred this appeal.

Learned advocate for the appellant submits that the learned Tribunal has committed an error in fixing monthly income of the deceased. The deceased was employee of Lakshmi Electric & Electronics, a shop room. The employer i.e. P.W.3 deposed before this Tribunal that he used to give Rs.100/- per day to the deceased. One certificate was also marked as exhibit 12 but the learned Tribunal has not considered the income of the deceased and assessed the compensation fixing monthly income of the deceased to be Rs.2,000/-. So, the necessary order maybe passed for fixing the monthly income of the deceased Rs.3,000/- per month.

Learned advocate for the insurance Company submits that the learned Tribunal has not committed any error in passing the impugned award. The learned Tribunal has correctly observed that a person cannot be employed more than 20 days in a month. Thus, the monthly income cannot be more than Rs.2,000/-. So, he prayed for necessary order for disposal of the instant appeal.

Heard the learned advocates and perused the materials on record. It appears to me that the wife and the mother of the deceased have preferred the claim application. The entire circumstances of the case shows that the deceased was the sole male member as well as the sole bread earner of the family. At this juncture, the income of the deceased was stated by his employer (P.W.2) to be Rs.100/- per day. The learned Tribunal has considered the daily income of the deceased to be Rs.100/- but is of view that the person cannot be employed more than 20 days. However, the observation of learned Tribunal is not at all perverse but considering the sole beneficial purpose of the legislation and considering the present status of the claimants to be the fateful wife and mother of the deceased, I think it is necessary to hold that the monthly income of the deceased should not be less than Rs.3,000/- per month. It further appears that the deceased was 25 years of age at the time of accident. So, according to the observation of Hon'ble Supreme Court in ***Sarala Verma***, the applicable multiplier should be 18.

In this case, the wife of the deceased died during the pendency of the appeal. So, the mother of the deceased i.e. sole appellant is entitled to get general damages of Rs.30,000/- only towards the head of funeral expenses and loss of state.

According to the ratio of Hon'ble Supreme Court passed in ***Pranay Shetty***, the claimants are also entitled to get the future prospect as well as the general damages. Considering the entire aspect, it appears that the impugned order passed by the learned Tribunal needs to be modified and recusted here under.

1. Monthly income	Rs.3,000/-
2. Annual income(3,000X12)	Rs.36,000/-
3. Add 40% Future prospect	Rs.14,400/-
	Rs.50,400/-
4. Less 1/3rd deduction	Rs.16,800/-
	Rs.33,600/-
5. Multiplier 18(age 25 years) (33,600X18)	Rs.6,04,800/-
6. General Damages	Rs.30,000/-
	Rs.6,34,800/-
7. Less award received	Rs.2,82,000/-
Total	Rs.3,52,800/-

According to the above calculations, the compensation comes to Rs.6,34,800/-. The learned

Tribunal has already awarded to Rs.2,82,000/-. Thus, the balance comes to Rs.3,52,800/-

The Oriental Insurance Co. Ltd. is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application till its actual realisation over the balance amount and the amount already received by the claimant shall also carry 6% interest pay from the date of filing till their payment, if not already given. The Insurance Company is directed to pay the compensation according to the direction made above with the office of the learned Tribunal within eight weeks from the passing of this order.

On such deposit, the appellant no.2 shall receive the entire compensation amount according to the prevalent rules subject to the ascertainment of payment of requisite court fees.

Accordingly, FMAT 1347 of 2009 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.)