

18.12.2023
Item No.12
BR

FMAT 960 of 2013
with
IA No. CAN 1 of 2023, CAN 2 of 2023

Hasina Bibi & Ors.
-vs-
New India Assurance Co. Ltd. & anr.

Mr. Amit Ranjan Roy

... for the appellant

Mr. Sanjay Paul,
Ms. Jaita Ghosh
... for the respondent

CAN 1 of 2023

This is an application for condonation of delay in filing the appeal. The delay is 278 days in preferring appeal. The cause of delay has been explained in paragraph 5 of the said application. It appears sufficient and satisfactory.

Accordingly, application is allowed by condoning the aforesaid delay.

CAN 1 of 2023 is, thus, disposed of.

CAN 2 of 2023

This is an application for amendment of the cause title in respect of name of petitioner no. 3.

It is submitted that the name inadvertently written as Sk. Jahangir Alam that is required to be corrected as Jahangir Alam Sekh. It is described in paragraph 5 of the said application. In support of his contention he also annexed Aadhar Card.

Heard both sides. Prayer is innocuous. Let the amendment application is allowed.

Department is directed to take necessary steps for correction in the cause title.

Accordingly, **CAN 2 of 2023** is, thus, disposed of.

FMAT 960 of 2013

Appellants/claimants filed this instant appeal being aggrieved and dissatisfied with the judgment and award dated 3rd August, 2012 passed by Additional District Judge-cum-MAC Tribunal Judge, 2nd Fast Track Court, Tamluk, Purba Medinipur in MAC Case No. 28 of 2009 and MAC Case No. 21 of 2007 filed under Section 166 of the Motor Vehicles Act thereby the learned Tribunal allowed the same on contest against the opposite party nos. 1 and 2 and awarded a sum Rs. 3,16,500/- as compensation and further allowed a simple interest at the rate of 9 per cent per annum from the date of filing of the claim application that is on 01.02.2007 till final realization.

The brief fact of the case is that on 17.09.2006 at about 4.30 p.m. The victim/deceased Sk. Saha Alam was riding his motorcycle along with metallic portion of the Mecheda-Haldia Road near Maitymore Brojolalchak. At that material point of time, another motorcycle bearing No. WB 30D/5981 was proceeding from Mecheda side towards Haldia at a high speed, recklessly and endangering the human life and safety and suddenly knocked down the victim with a great force, as a result the victim suffered serious injuries on his person and finally succumbed to such injuries on the same day at Haldia S.D. Hospital at Durgachak. A criminal case was registered and subsequently charge sheet has been submitted against the driver of the offending vehicle.

The learned Tribunal, after scanning of oral and documentary evidence brought on record by the parties, came to the conclusion that the accident was occurred due to the gross negligent driving of the driver of the offending motorcycle being registration no. WB 30D/5981 and awarded compensation as aforesaid.

It is submitted by the learned advocate appearing on behalf of the appellants that appellants have filed this appeal only on two grounds. Firstly, the Tribunal did not consider the future prospect of the victim and secondly, no actual general damages have been awarded by the Tribunal. He prays compensation towards two heads, future prospect and General damages on the basis of the Hon'ble Supreme Court judgment delivered in **National Insurance Company Limited vs. Pranay Sethi & Ors.**¹

¹ (2017) 16 SCC 680.

On the other hand, learned advocate appearing on behalf of the insurance company has not disputed about the observations made by the Ld. Tribunal in respect of date, time and manner of accident and death of the victim. He left the matter to the discretion of this Court to apply the proposition as laid down by the Hon'ble Supreme Court in **Pranay Sethi's** case.

Learned advocate appearing on behalf of the respondent /insurance company further submits that there is no dispute regarding the income of the victim as assessed by the Tribunal as well as multiplier and deduction made by the learned Tribunal. It is further submitted that the appellants have received only awarded sum of Rs. 3,16,500/- as awarded by the learned Tribunal without calculating interest thereon.

Heard both sides and on reliance of the judgment referred above by the claimants, this Court is of the view that the claimants are also entitled to General Damages and 10% Future prospect on the

basis of age of the victim. Claimants are also entitled to interest on the awarded compensation from the date of filing claim application till final realization.

Keeping in mind the above facts and submissions made by the parties, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Annual Income (Rs. 3,000/- X 12)	Rs. 36,000/-
Add 10% future prospect	Rs. 3,600/-
Total Income	Rs. 39,600/-
Less 1/3 rd towards personal expenses	Rs. 13,200/-
Total after less personal expenses	Rs. 26,400/-
Multiplier- 13 (Rs. 26,400/- X 13) (Loss of dependency)	Rs. 3,43,200/-
Add General Damages	Rs. 70,000/-
Total amount after Add General Damages	Rs. 4,13,200/-
Less Awarded Amount already received	Rs. 3,16,500/-
Total Enhanced compensation	Rs. 96,700/-

Thus, the appellants/claimants are further entitled to get enhanced compensation amount comes to Rs. 96,700/= (Rupees Ninety Six Thousand Seven Hundred Only) together with

interest @ 6% per annum from the date of filing of the claim application till final payment.

Claimants are also entitled to interest @ 6% per annum on the awarded compensation amount i.e. Rs. 3,16,500/- from the date of filing application till final payment, if not paid earlier.

The Respondent-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 96,700/= together with total 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 judgment and award dated 3rd August, 2012.

Judgment and award dated 3rd August, 2012 is hereby modified to the aforesaid extent.

Accordingly, the appeal being **FMAT 960 of 2013** is, thus, disposed of.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Ajay Kumar Gupta , J.)