06.09. 2023
item No.29
n.b.
ct. no. 551

FMAT 1160 of 2014
with
IA No. CAN 1 of 2014(Old No. CAN 12392 of 2014)
+
CAN 2 of 2017(Old No. CAN 6949 of 2017) (not found)
+
CAN 3 of 2022
+
CAN 4 of 2022

Arjina Sekh & Ors.
Vs.
United India Insurance Co. Ltd.

Mr. Ali Imam Shah,
..... appellants.
Mr. Rajesh Singh,
...... the respondent.

In Re. CAN 4 of 2022

This is application for correction of the name and spelling of appellant no.2 and for recording the majority of minor appellant nos. 2 and 3 who have become major during the pendency of the appeal.

Accordingly, CAN 4 of 2022 is disposed of with a direction that the department shall make out the correction as mentioned in the para 2 of the application within a fortnight.

In Re. FMAT 1160 of 2014

The instant appeal has been preferred against the judgment and award dated August 30, 2014 passed by the learned Tribunal, 2nd Court. Burdwan in M.A. C. case No. 11 of 2013.

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.4,15,000/- along with 7% interest per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the impugned award, the present appeal is preferred by the claimants for enhancement.

Learned advocate for the claimants submitted that the learned Tribunal has awarded the compensation by fixing the income of the deceased of Rs.3,000/- per month. The deceased was a deed writer and two copies of registered deeds have been produced before learned Tribunal, which was written by the deceased. Being a deed writer, the income of the deceased cannot be calculated to be Rs.3,000/- per month. The deceased died in the year 2013. Thus, in this matter, the income of the deceased cannot be less than Rs.10,000/- per month.

Learned advocate appearing on behalf of the Insurance Company submitted that the deed has been submitted before the learned Tribunal but it was not mentioned in the deed, what amount was received the deed writer by preparation or writing the sale deed. He further argued that no document was produced before the learned Tribunal regarding the actual income of the deceased. Thus, learned Tribunal has correctly came to a conclusion that the income of the deceased was Rs.3,000/- per month at the time of accident. There is not infirmity in such finding.

Heard the learned advocates. Perused the materials on record, it appears to me that the deceased was deed writer. The deeds written by the deceased were produced before the learned Tribunal. Learned Tribunal has assessed the compensation on the basis of notional income of the deceased to be Rs.3,000/- per month. The deceased was an actual deed writer and his income cannot be assessed notionally. At this juncture, I think it necessary to observe that the deed writer may not have a particular income of a specific month. Thus, the income of a deed writer can be assessed according to the number of deeds he wrote in a month. There are no evidence on this score. At this juncture, I think it necessary, the income of the deceased should be calculated in this case at least Rs.5,000/- per month.

In considering the just and proper compensation of this case, the claimants are entitled to get the future prospect and general damages according to the observation of Hon'ble Suprme Court passed in **Pranay Shetti.** The number of the claimants are more than 3 so, deduction of personal expenses of this case should be ¼. Multiplier would be adopted in this case as 13; as the deceased was within the age group of 45 to 50. So, to assess the just and proper compensation of this case, impugned award passed by the learned Tribunal is modified and recusted as follows:

1.	Monthly income	Rs.5,000/-
2.	25% added for future prospects	Rs.1,250/-
3.	Total Income	Rs.6,250/-
4.	Deduction 1/4th as claimants three above	Rs.1562.5/-
5.	Contribution of his family (Rs. 1562.5X3)	Rs.4,687.5/-
6.	Multiplier by 12 as age limit 45 to 50 (4687.5 X 13 X 12)	Rs.7,31,250/-
7.	Loss of estate	Rs.15,000/-
8.	Funeral expenses	Rs.15,000/-
9.	Spousal consortium	Rs.40,000/-
10.	Total Compensation	Rs.8,01,250/-
11.	Less Insurance Co. Paid	Rs.4,15,000/-
	Balance	**Rs.3,86,250/-**

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 within eight weeks from the date of passing of the order. On such deposit, the claimants are at liberty to receive the same in equal shares according to the prelevant rules subject to the ascertainment of payment of requisite court fees.

Accordingly, FMA 1160 of 2014 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.)