IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 1502 Of 2012

With

IA No. CAN 1 of 2023, CAN 2 of 2023

Asima Bag @ Vaseem Bag & Ors.

Versus

The National Insurance Co. Ltd. and Anr.

For the Appellants : Mr. Amit Ranjan Roy, Adv.

For the Respondents/Ins. Co. : Ms. Sucharita Paul, Adv.

Heard on : 11.12.2023

Judgment on : 11.12.2023

Ajay Kumar Gupta, J:

1. Affidavit of service filed by the petitioner is taken on record.

CAN 1 of 2023

2. This is an application for amendment of cause title in connection with name of the petitioner nos. 1, 3 and 4. Those names have been recorded due to typographical mistake. In support of his submission, he filed the Aadhar card, PAN card and ration card. Ld Advocate appearing on behalf of the appellants prays for amendment of cause title as per prayer made in application. Other side raised no objection. Let the amendment application is considered and allowed.

3. Department is directed to take necessary steps to amend the cause title as prayed for.

4. Accordingly, **CAN 1 of 2023** is disposed of.

CAN 2 of 2023

5. This is an application for recording attainment of majority of appellant nos. 3 and 4. They became now major. Appellants filed Aadhar card, from where it appears both appellant nos. 3 and 4 attained their majority. Accordingly, their names may be recorded as major.

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

FMAT 1502 of 2012

7. Paper book filed today is taken on record. Copy already served to the respondent no. 1/ insurance company. Opposite party no. 2 not present in spite of of service of notice.

8. It is submitted by the learned advocate appearing on behalf of the appellants that there are no disputes regarding facts of the accident as well as observations made by the learned Tribunal. However, they came before this

Court for enhancement of compensation only on two grounds. Firstly, the learned Tribunal did not consider future prospect as well as actual general damages in view of the Hon'ble Supreme Court judgment passed in **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**[1] Secondly, there should be pay and recovery provision in view of catena of judgements passed by the Hon'ble Supreme Court as the learned Tribunal has directed the owner of the offending vehicle to pay awarded compensation to the tune of Rs. 3,93,500/- along with interest of 6 per cent per annum from the date of filing of the claim application. No any compensation amount paid by the owner of the offending vehicle.

9. On the other hand, Ms. Paul submits that there is no dispute regarding the facts of the accident and observations made by the learned Tribunal. The Driver of the offending vehicle had no driving license on the date of accident. It is proved by way of oral and documentary evidence as such

[1] **(2017) 16 SCC 680**

the Learned Tribunal exonerated the Insurance company from paying awarded compensation. However, if this court allow to pay first and recover the awarded sum from the owner of the offending on the basis of judgments passed by the Hon'ble Supreme court than the actual multiplier would be 15 in place of 16 in view of the judgment passed in **Sarala Verma and Others Vs. Delhi Transport Corp. and Anr.**[2] Finally, she left the matter to the discretion of the Court regarding the enhancement of the compensation after consideration of future prospect and General damages.

10. Having heard the submission advanced by the parties and upon perusal of record, it appears the appellants have filed this instant appeal feeling aggrieved and dissatisfied with the judgment and award dated 1st September, 2012 passed by learned Judge, Motor Accident Claims Tribunal, 5th Court, Howrah in MACC case No. 539 of 2006 thereby the learned Tribunal allowed the claim case

[2] **(2009) 6 SCC 121**

ex parte against the opposite party no. 1 and dismissed on contest against the opposite party no. 2. Opposite party no. 1 is the insurance company and opposite party no. 2 is the owner of the offending vehicle. The learned Tribunal awarded a sum of Rs. 3,93,500/- together with interest at the rate of 6 per cent per annum from the date of filing of the claim application. There is no dispute regarding manner of accident and the victim died due to the injuries suffered in a motor traffic accident. However, upon perusal of the judgment, it reveals the learned Tribunal did not consider the future prospect as well as the actual general damages in view of the **Pranay Sethi's** case (Supra). The Hon'ble Supreme Court has laid down the proposition regarding the future prospect as well as general damages. We should not forget about the proposition laid down by the Hon’ble Supreme in the aforesaid case. Therefore, appellants are entitled to get 40% future prospects and general damages to the tune of Rs. 70,000/-

11. With regards to the multiplier, the Learned Tribunal accepted multiplier as 16 though the deceased comes within the aged group of 36 to 40 years and for that actual multiplier would be 15 in the view of the decision of Supreme court reported in **Sarla Verma's** case (Supra).

12. It is proved that the driver of the offending vehicle had not possessed any driving licence for driving the offending vehicle at the time of accident. The Hon'ble Supreme Court time and again on similar facts and circumstances of the present case directed the Insurance Policy to pay the compensation to the claimants at the first instance, when it is found that the insurance policy was valid on the date of accident and further given liberty to recover the amount from the owner of the offending vehicle in accordance with law. The Hon'ble Supreme Court further observed that there is no need to file a separate suit or fresh proceeding for recovery of the compensation amount awarded by the ld. Tribunal from the owner or driver of the offending vehicle.

13. Keeping in mind the above observations, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Add: 40% Future Prospect	Rs. 1,200/-
Total Income	Rs. 4,200/-
Annual Income (4,200/- X 12)	Rs. 50,400/-
Multiplier 15 (Rs. 50,400 X 15)	Rs. 7,56,000/-
Less $1/4^{th}$ for personal expenses	Rs. 1,89,000/-
Total Income after deduction	Rs. 5,67,000/-
Add: General Damages	Rs. 70,000/-
Total Compensation	Rs. 6,37,000/-

14. Thus, the appellants/claimants are entitled to get compensation amount to Rs. 6,37,000/= (Rs. six lakhs thirty seven thousand only) which shall carry interest @ 6% per annum from the date of filing of the claim application till final payment.

15. It is informed that no compensation amount received by the appellants/claimants till date.

16. The respondent no. 1/Insurance Company is directed to pay the entire compensation amount together with interest as indicated about first and thereafter recover the same from the owner of the offending vehicle in accordance with law as the owner of the offending vehicle violated the conditions of the insurance policy.

17. With the above observations, **FMAT 1502 of 2012** is disposed of.

18. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

19. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

20. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)