IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

23.04.2024
SL No.10
Court No. 551
Ali

F.M.A.T. (MV) 9 of 2024
With
IA No.:CAN/1/2024 & CAN/2/2024

The New India Assurance Co. Ltd.
Vs.
Amina Khatun Bibi & Ors.

Ms. Sucharita Paul
……for the appellant-Insurance Co.

Mr. Subhankar Mondal
……….for the respondents-claimants.

In Re.: CAN/2/2024

In pursuance to the direction of this Court dated 27th February, 2024, the insurance company has deposited the entire awarded sum together with interest less the statutory deposit amounting to Rs. 50,33,516/- vide OD Challan No.4145, OD dated 19.03.2024.

Considering the compliance made on behalf of the insurance company the interim order of stay passed by this Court on the earlier occasion is herby made absolute and be extended till the disposal of the instant appeal.

Accordingly, the application being **CAN/2/2024** is disposed of.

In Re.: CAN/1/2024

This is an application for condonation of delay.

The Insurance Company has preferred the instant appeal against the award.

The report of the Stamp Reporter suggests that there are 159 days delays in preferring the instant appeal.

Heard the learned advocate for the appellant also heard the learned advocate for the respondents. Considering the submissions and perusing the grounds mentioned in the body of the application itself, it appears to me that the grounds are sufficient.

Delay in preferring the appeal is hereby condoned.

The appeal is formally admitted.

The respondents/claimants made their appearance through Mr. Mondal learned advocate. Respondent No. 5 is the owner of the offending vehicle who did not contest the matter before the learned tribunal. Accordingly, the notices of appeal upon the respondent No. 5 as well as other respondents are dispensed with.

A very short point is involved in this appeal. Accordingly, the appeal is taken up for hearing.

Ms. Paul, learned advocate appearing on behalf of the Insurance Company submits that in response to an application by the claimants under Section 166 of MJ.V. Act. The learned tribunal has awarded a sum of Rs. 35,34,512/- in favour of the claimants as compensation and directed the Insurance Company to pay the compensation.

Ms. Paul, learned advocate further submits that in awarding the compensation the learned tribunal has awarded a sum of Rs.1,00,000/- towards the loss of estate and the love and affection, Rs.10,000/- towards funeral expenses and cost of litigation and also awarded further Rs. 1,00,000/- towards the loss of consortium.

Ms. Paul submits that the award passed under the head of general damages is not in conformity with the observation of Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi.***

She further submits that the learned tribunal may award a sum of Rs.70,000/- towards the general damages.

Mr. Subhankar Mondal, learned advocate appearing on behalf of the claimants submits that the award passed by the learned tribunal is justified so the award cannot be modified.

Heard the learned advocate perused the award passed by the learned tribunal. The Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi*** has held that in all cases under Section 166 of M.V. Act. The claimants are entitled to get the general damages of Rs. 70,000/- amongst the said head Rs.15,000/- would be the loss of estate Rs.15,000/- would be the funeral expenses and Rs.40,000/- for loss of consortium. It appears that the learned tribunal has awarded the compensation not following the principle laid down by the Hon'ble Apex Court in ***Prnay Sethi (supra).***

Accordingly, the award passed by the learned tribunal requires modification.

In following the observation of Hon'ble Apex Court in ***Prnay Sethi (supra)*** the claimants are entitled to get enhancement @ 10% per annum of general damages after every three years of the pronouncing the judgment in ***Pranay Sethi.*** The award was passed by the learned tribunal is in the year 2023. Thus, the claimants are entitled to get @ 10% of the general damages.

Considering the same the award passed by the learned tribunal requires modification.

The general damages awarded by the learned tribunal amounting to Rs.2,10,000/-is hereby modified and reduced to Rs.77,000/-. So, the just and proper compensation of this case is (Rs.33,24,512/-+ Rs.77,000/-)=Rs.34,01,512/-. The award shall carry @ 6% interest per annum from the date of filing of the claim application i.e. from 22.12.2016 till payment.

It appears that the Insurance Company has already deposited the entire awarded sum with the office of the learned Registrar General, High Court, Calcutta. The office of the learned Registrar General, High Court, Calcutta is directed to calculate the award passed by this Court and disburse the same in favour of the claimants equally within four weeks. It further appears after such disbursal there would have some residue in the account of Insurance Company; the same has to be refunded to the Insurance Company on usual prayer. Other direction passed by the learned tribunal would be remain intact.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

The instant **FMAT (MV) 9 of 2024** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)