

29.4. 2024
item No.216
n.b.
ct. no. 551

FMAT 351 of 2018
with
IA No. CAN 2 of 2018(Old No. CAN 3096 of 2018)

Sima Banerjee & Ors.
Vs.
United India Insurance Co. Ltd. & Anr.

Mr. Soujanya Bandyopadhyay,
.....for the appellants.
Mr. Rajesh Singh,
.... For the respondents.

In Re. CAN 2 of 2018(Old No. CAN 3096 of 2018)

This is an application for appropriate order for speedy disposal of the instant appeal.

Heard the learned advocate. The appeal is taken up for hearing today. Accordingly, CAN 2 of 2018 is disposed of.

CAN 1 of 2018(Old No. 3095 of 2018) was not listed. Let it be taken up for disposal.

In Re. CAN 1 of 2018(Old No. 3095 of 2018)

The instant appeal has been preferred against the judgment and award dated January 29, 2015 passed by the learned Tribunal, 2nd Bench, City Civil Court. Calcutta, in M.A.C. case No. 218 of 2014.

The claimant has preferred the instant appeal in delay. This is an application for condonation of delay.

The affidavit in opposition filed on behalf of the respondent is taken on record.

Having heard learned advocate for the parties and considering the ground mentioned in the body of CAN 1 of 2018 (Old No. 3095 of 2018) the grounds appears to be sufficient, thus the CAN 1 of 2018 be considered and allowed. Delay condoned.

Appeal be formally admitted.

It appears that a very short point is involved in this appeal. The appeal is taken up for hearing.

The brief fact of the case is that the victim of this case, namely, Nirmal Banerjee @ Khokon Banerjee was driving a jeep carrying 3/4 passengers and at that time a bus bearing registration no. WB 15A 4748, which was coming in a rash and negligent manner without blowing any horn. The driver of the offending vehicle hit the jeep from the back, which was stood at the side of the road. As a result, the victim fell down and sustained severe injuries all over his body. Local people admitted him to the Chinsurah S. D. Hospital where he was declared brought dead.

The widow of the victim including daughter and son preferred an application before the learned Tribunal for getting compensation on the ground that the victim died due to rash and negligent driving of the offending vehicle duly insured under the policy of the insurance Company.

The claim case was contested by the insurance company by filing written statement.

After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs.3,21,500/- towards the compensation and directed the insurance company to pay the award.

The Insurance Company has already satisfied the award through the office of the learned Tribunal.

Being aggrieved by the dissatisfied with the said award the instant appeal has been preferred by the claimants for enhancement of the award.

Mr. Bhettacharjee, learned advocate appearing on behalf of the claimants submits that the computation of compensation by the learned Tribunal is incorrect. The appeal is only preferred to the grounds that the learned Tribunal has failed to award the future prospect as well as the general damages to the claimants by virtue of the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Shetti**. He submits that the deceased was at the age of 48 years, so the claimants are entitled to get 25% of his established income towards the future prospect. He further argued that the learned Tribunal has only awarded a sum of Rs.9,500/- towards the general damages of this case. The general damages should be Rs.70,000/-

Mr. Rajesh Singh, learned advocate appearing on behalf of the Insurance Company submits that the instant

award was passed in the year 2015. So, that the learned Tribunal had no opportunity to assess the compensation by virtue of the decision of the Hon'ble Supreme Court in **Pranay Shetti(supra)**, which was pronounced in the year 2017. He further argued that the learned Tribunal has already assessed the compensation.

He further argued that the claimants has already received the compensation through the office of the learned Tribunal, now, by filing the instant appeal, the award cannot be enhanced.

Heard the learned advocates and perused the materials on record. By virtue of the decision of the Hon'ble Supreme Court in **Pranay Shetti(supra)**, in all pending application and appeal, the general damages and the future prospect has to be considered. In this case, it appears that though the learned Tribunal had no opportunity to consider the decision of the Hon'ble Supreme Court in **Pranay Shetti(supra)** but as the instant matter is pending since the pronouncement of the judgment of the **Pranay Shetti(supra)**, I think it necessary to hold the claimants are entitled to get general damages and future prospect by virtue of decision of Hon'ble Supreme Court in **Pranay Shetti(supra)**. On the above aspect, the award passed by the learned Tribunal required modification.

Monthly Income	Rs. 3,000/-
Annual Income	Rs. 36,000/-
Less 1/3 rd deduction for	Rs. 24,000/-

Personal Expenses (Rs.

12,000/-)	
Add Future Prospect 25%	<u>Rs. 6,000/-</u>
	Rs. 30,000/-
Multiplier (13)	Rs. 3,90,000/-
Add General Damages	<u>Rs. 70,000/-</u>
Total	Rs. 4,60,000/-

After calculation the award comes to Rs. 4,60,000/-.

The claimant has already received amount of Rs. 3,21,500/-. The balance award comes to Rs. 1,38,500/-.

The balance award shall carry 6% interest from the date of filing of the claim application i.e. from 30.06.2014 till actual payment.

The insurance company is directed to comply the award through the office of the learned Registrar General within six weeks. On such deposit, the claimants are at liberty to receive the same equally from the office. The payment of compensation is subject to ascertainment of payment of deficit court fees, if any.

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

Accordingly, FMAT 351 of 2018 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.)