22.5. 2024
item No.14
n.b.
ct. no. 25

FMAT(MV) 223 of 2022

Sri Swapan Kr. Roy & Ors.
Vs.
The New India Assurance Co. Ltd.

Mr. Jayanta Kr. Mondal,
Mr. Sayantan Rakshit
.....for the appellants.
Ms. Sucharita Paul,
.... For the respondent.

In pursuance to the direction of this Court in respect of CAN 1 of 2023 dated April 20, 2024, the appellant has deposited compensatory cost of Rs.10,000/- with the office of the State Legal Services Authority, Calcutta. The receipt was filed with this Court. Perused the receipt.

Considering the compliance made on behalf of the appellant the application being, CAN 1 of 2023 is considered and disposed of. The delay in preferring the instant appeal is hereby condoned.

In Re. FMAT(MV) 223 of 2022

The insurance Company is represented thorough learned advocate Ms. Paul. The owner of the offending vehicle did not contest before the learned Tribunal. Accordingly the appeal is ready for hearing.

The instant appeal has been preferred against the judgment and award dated September 29, 2018 passed by the learned Tribunal, Fast Track Court, at Raiganj, Uttar Dinajpur, Tamluk, in M.A.C. case No. 144 of 2010.

The brief fact of the case is that the victim of this case namely, Binati Roy @ Binatibala Roy died in a road traffic accident on 21.2.2009. The son and the daughter of the deceased filed an application before the learned Tribunal under Section 163A of the M. V. Act for getting compensation on the ground that the victim died in an accident and the vehicle was insured under the policy of the Insurance Company. The claim was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.3,42,000/- towards the compensation along with 6% interest per annum from the date of evidence.

The insurance company has satisfied the award along with interest through the office of the learned Tribunal.

Being aggrieved by and dissatisfied with the said award, instant appeal has been preferred.

Learned advocate Mr. Mondal appearing on behalf of the appellant submits that the award passed by the learned Tribunal is not justified by virtue of notification of Section 163A of M.V. Act dated May 22, 2018 as well as the observation of Hon'ble Supreme Court in the case of ***New India Assurance Company Limited Vs. Urmila Halder***.

He also submits that according to the Notification in an application under Section 163A of the M.V. Act, wherein the death had been caused and the fixed compensation would be Rs.5,00,000/-. So, he prayed for necessary enhancement of the award.

Learned advocate appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal has already been satisfied; the claimants after receiving the entire award has filed the instant appeal on some frivolous grounds. So, the appeal itself is not maintainable.

Heard the learned advocates and perused the materials on record.

The observation of Hon'ble Apex Court in Urmila Halder Vs. New India Assurance Co. Ltd. & Ors. as reflected at paragraph 10 of the decision of Hon'ble Apex Court is required to be set out as follows:-

> ***"10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs. 5,00,000/-***

> ***(Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks".***

It appears to me that the learned tribunal has passed the award on 27th day of September, 2019 the amendment has taken place vide Notification dated 22nd May, 2018 so the learned tribunal must have adopted the guidelines of the said amendment. However, in considering the opinion of the Hon'ble Apex Court in Urmila Halder (supra) it appears to me that the award passed by the learned tribunal requires enhancement.

It is the admitted fact that the death has been caused due to vehicular accident. So, the claimants are entitled to get the fixed of Rs.5,00,000/- along with 6% interest per annum from the date of filing of the claim application. It appears that the insurance company has deposited the awarded amount of Rs.3,42,000/-. The rest awarded amount comes to Rs.1,58,000/-.

The insurance company is directed to pay the balance awarded sum amounting to Rs.1,58,000/- together with 6% interest per annum from the date of filing of claim application till its actual payment.

The insurance company is directed to comply with the order through the office of the learned Registrar General, High Court, Calcutta within a period of eight weeks from the date of passing of this order.

On such deposit, the office of the learned Registrar General, High Court, Calcutta shall disburse 50% of the awarded amount in favour of the appellant no.1 and rest amount in favour of the other appellants equally subject to ascertainment of payment of deficit court fees. The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

Accordingly, FMAT (MV) 223 of 2022 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.)