10.1. 2024
item No.6
n.b.
ct. no. 551

FMAT(MV) 455 of 2022
with
IA CAN 1 of 2023

Jyotsna Sarkar & Ors.
Vs.
The New India Assurance Co. Ltd.

Mr. Jayanta Kumar Mondal,
..... for the appellant.
Mr. Animesh Das
...... for the respondent

The Instant appeal has been preferred against the judgment and award dated June 10, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, in M.A.C. Case no.29, 2010/72 of 2010.

In Re. CAN 1 of 2023

This is an application for condonation of delay preferred by the claimants/appellant. The report of the stamp reporter suggests that there are only 5 days delay in preferring the instant appeal. Considering the grounds mentioned in CAN 1 of 2023, it appears that the grounds are sufficient. Accordingly, the delay in preferring the appeal is condoned.

The respondent no.1 is represented by Mr. Das, learned advocate. The respondent no.2 is the owner of the offending vehicle, who did not contest before the learned Tribunal. The notice of appeal upon the respondent no.2 is dispensed with.

Mr. Mukherjee, learned advocate for the appellant submits that for the speedy disposal of the appeal he has prepared the paper book containing pleadings and proof of the LCR.

Considering the submission of the learned advocates for the parties, the matter is taken up for hearing.

In Re. FMAT(MV) 455 of 2022

The appellants herein have preferred an application before the learned Tribunal for getting compensation under Section 166 of the M.V. Act on the ground that their predecessor was died in the road traffic accident due to rash and negligent driving of the offending vehicle duly insured under the policy of the Insurance Company. The claimant's case was contested by the Insurance Company.

After hearing the parties, the learned Tribunal has awarded sum of Rs.10,39,386/- together with 6% interest per annum form the date of filing of the claim application,

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred by the claimants only for enhancement of the compensation. The sole ground of appeal is that the learned Tribunal has wrongly adopted the multiplier of this case to be 17. The deceased was at the age of 24 years. So, according to the decision of the Hon'ble Supreme Court in **Sarala Verma**, the applicable multiplier would be 18.

Learned advocate for the appellant further submits that the learned Tribunal has failed to add the future prospect and only Rs.11,500/- was given towards the general damages. In this case, the claimants are entitled to get the 40% of established income of the deceased towards the future prospect and Rs.70,000/- general damages.

Learned advocate appearing on behalf of the Insurance Company raised strong objection. He argued the para 23 of the claim application wherein the claim of the claimant was specifically mentioned under separate head. He submits that the learned Tribunal has considered the claim of the present petition and their claim was allowed. He submits that the learned Tribunal has committed no error. He only allowed the claim application as prayed for by the claimant. At this juncture, by filing the appeal, the claim cannot be enhanced.

Heard the learned advocates and perused the materials on record, it appears that claim was based on the amount of Rs.10,39,386/-(Para 23 of the claim application). In a case of compensation under Section 166 of the M. V. Act, the Tribunal has to assess the just and proper compensation. The claim of the claimant is immaterial. In a case the claimant may pray any amount of compensation, but the learned Tribunal has to award just and proper compensation according to the law by virtue of decision of Hon'ble Supreme Court. The just and proper compensation has to be assessed by the Tribunal itself. It appears that the learned Tribunal has misguided himself and restricted himself to the claim of the claimant in this case. I am of the view, that the claimants are entitled to get the just and proper compensation.

Considering the same, it appears to me that the award passed by the learned Tribunal need be modified.

The proper compensation is recusted below:

1. Monthly income	: Rs.7558/-
2. Annual income	: Rs.90,696/-
3. Add future prospect	: Rs.36,278/-
	Rs.1,26,974/-
4. Less 1/3rd for personal exp	: Rs.42,324/-
	Rs.84,650/-
5. Multiplier 18 (84,650 X 18)	: Rs.15,23,700/-
6. Add General Damages	: Rs.77,000/-
	Rs.16,00,700/-
7. Less Award already paid	: Rs.10,39,386/-
Balance	: Rs.5,61,314/-

After calculation just and proper compensation comes to Rs.16,00,700/-. The claimant has already received amount of Rs.10,39,386 along with interest. So, balance award come to Rs.5,61,314/-. I am clear that the just and proper compensation of the case is assessed to be Rs.16,00,700/- together with 6% interest per annum from the date of filing of the claim application.

The Insurance Company is directed to pay the balance awarded sum along with 6% interest per annum from the date of filing of the claim application within six weeks from the date of passing of the order through the office of the learned Registrar General, High Court Calcutta.

On such deposit the office of the leaned Registrar General, High Court, Calcutta shall disburse the amount in favour of the claimants according to the direction made at the operative portion of the impugned award passed by the learned Tribunal. The payment of compensation is subject to the ascertainment of payment of ddeficit court fees if any.

Accordingly, FMAT(MV) 455 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.)