IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 1577 of 2009

The New India Assurance Company Ltd.

Vs.

Ashrupa Khatoon @ Ashrupa Islam & Ors.

For the Appellant/ Insurance company	: Mr. Gopa Das Mukherjee.
For the Respondent No. 2 & 3/ Claimants	: Mr. Niranjan Maity.
For the Respondent No. 4/ Owner	: None.
Hearing concluded on	: 23.09.2024
Judgment on	: 23.09.2024

Shampa Dutt (Paul) , J.

Re : IA No.: CAN 1 of 2009
(Old No.: CAN 9433 of 2009)

1. Learned counsel for the appellant moves IA No.: CAN 1 of 2009 (Old No.: CAN 9433 of 2009). By the instant application the appellant has prayed for condonation of delay for filing the said appeal. As seen from the application, it appears that the grounds as made out for the delay is departmental procedural delay and as such the appellant has prayed for condonation of the same.
2. Considering the fact that this is a beneficial legislation and also considering the grounds as made out, the delay be condoned.
3. **Application being IA No.: CAN 1 of 2009 (Old No.: CAN 9433 of 2009) is accordingly allowed.**

Re : IA No.: CAN 3 of 2024

4. IA No.: CAN 3 of 2024 has been preferred praying for noting that the claimants Ashrupa Khatoon @ Ashrupa Islam and Kaji Asraful Ali @ Kazi Asraful (Respondent No. 2 and 3) have now become 'major' (copies of Birth Certificates are on record).
5. Necessary note be made in the cause title.
6. It is further stated that claimant no. 1 'Rafia Bewa' has died intestate on 29.03.2012 and her legal heirs are on record. (copy of the death certificate is on record).

7. Accordingly, name of Rafia Bewa be deleted from the cause title of the Memo of Appeal.

8. **IA No.: CAN 3 of 2024 is allowed.**

The Appeal:-

9. The present appeal has been preferred by the Insurance Company against the judgment and award dated 01.08.2008 passed by learned Judge, M.A.C. Tribunal, 10th Court, Alipore, South 24 Parganas, in MACC No.15 of 2007, **under Section 166 of the M.V Act.**

10. **Facts :-**

> *"……….On 20.04.2004 while some businessman including the victim Kaji Askar Ali @ Aajgar (a cloth merchant) was proceeding towards Beldanga from Rajinagar more side travelling by a Mini Truck bearing No. WB-19A-6476 along with his business materials like clothings as owner of the goods by paying hire charges along with N.H 34 and the driver of the said vehicle was proceeding with his vehicle towards Beldanga* ***rashly and negligently*** *and thereby dashed against an electric Pole situated by the left side of N.H 34 near Beltala with tremendous for force and as a result the said Kaji Askar Ali @ Aajkar sustained fatal injuries on his person and died almost on the spot.*
>
> *That the deceased was aged about 36 years at the time of accident and earned Rs.4500/- per month from his business. Over this accident Rejinagar P.S. Case No.36 dated 20.04.2004 under Section 279/337/338/304A of the I.P.C was started against the driver of the offending vehicle bearing No.WB-19A 6476.*
>
> *The petitioners claimed Rs.4,00,000/- as compensation…………"*

11. The owner in spite of summons did not contest the claim and the case against him was taken up ex-parte.

12. By filing written statement, the opposite party no.2/the Insurance Company denied all the material allegations as stated in the claim petition. The opposite party further stated that the claim petition is not maintainable in law as well as in facts and the said petition is bad for *non-joinder* of necessary parties and *mis-joinder* of unnecessary parties and that the applicant must prove that the victim was 36 years of age and was a businessman and that he used to earn Rs.4,500/- p.m. at the time of the accident and thus prayed for dismissal of the claim application.

13. The claimant examined **three witnesses** and proved relevant document which was marked **as exhibit.**

14. The opposite party did not adduce any evidence but cross examined the claimant's witnesses.

15. On conclusion of hearing the Tribunal held as follows :-

"..........MACC No. 15 of 2007

Dated 01.08.2008

The compensation is to be computed on the basis of Rs.2,000/- per month after deduction of 1/3rd for the accident of victim had he been alive. The multiplier suggested for the age group of 40 to 45 years is '15' and the compensation comes to Rs.3,60,000/-. Along with this the petitioners are entitled to Rs.4500/- as funeral expenses and loss of estate. Therefore, the total compensation comes to Rs.3,64,500/-(Rupees Three Lacs Sixty Four Thousand and Five Hundred only).......

Sd/-
Additional District Judge
10th Court, Alipore......"

16. Being aggrieved, the present appeal has been preferred on the ground:-

That the income, disability certificate and medical expenses considered by the Tribunal was not in accordance with law and thus 'just compensation' was not granted.

17. Considering the materials including the evidence on record, it appears that:-

i) There is no documents as to the income of the victim and as the accident took place in the year 2004, the income of the deceased is taken as **Rs.3,000/- per month.**

ii) Learned counsel for the appellant has submitted that the age of the deceased should be taken as 40. But this Court in view of the age in the postmortem report and the death certificate holds that the deceased/victim was aged about **36 years** at the time of accident and as such, **multiplier '15'** is applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iii) As seen from the claim application, the number of claimants initially was four. As such, **1/4th** shall be the deduction towards personal expense of the deceased. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***

iv) **Future prospects** – it appears that the deceased was self employed and, as such, **40% of the income** shall be added towards future prospects. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

v) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000**. ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

18. Though there is no cross appeal by the claimant for enhancement of compensation in the present appeal filed by the Insurance Company, this Court considering the prevailing laws and relying upon the judgment in ***Janabai WD/O Dinkarrao Ghorpade & Ors. Vs. M/S. I.C.I.C.I. Lambord Insurance Company Ltd., Civil Appeal No.______of 2022 (Arising out of SLP (Civil) No. 21077 of 2019),*** holds that the claimant in this case is entitled under the law to enhanced compensation and as such the calculation of **'just compensation'** is as follows:-

Monthly Income	*Rs. 3,000/-*
Annual Income (3,000 x 12)	*Rs. 36,000/-*
*Less : Less : **1/4th** towards personal and living expenses*	*Rs. 9,000/-*
	Rs. 27,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 10,800/-***
	Rs. 37,800/-
Multiplier x 15 *(37,800 x 15)*	***Rs. 5, 67, 000/-***

Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 6, 51, 000/-***

19. Admittedly, the **Appellant/Insurance Company** has deposited the amount of compensation of **Rs. 3,64,500/-** in terms of the order of the learned Tribunal. The claimants are now entitled to the **total amount of compensation of Rs. 6, 51, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.**

20. Taking into consideration, the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the balance amount of **Rs. 2,86,500/-** along with **interest on the total compensation amount,** with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimants (being Respondent No. 2 & 3) **in equal proportion**, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

21. It appears that the victim admittedly was travelling in a Mini Truck **bearing No. WB-19A-6476** (offending vehicle) along with goods and as such, the victim was a **gratuitous passenger.** ***(Balu Krishna Chavan vs. The Reliance General Insurance***

Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022)

22. **It is proved from the Exhibits (FIR and charge sheet)** that the deceased was travelling as a **gratuitous passenger** in the offending vehicles being a Mini Truck **bearing No. WB-19A-6476,** insured with the Appellant/Insurance Company and thus there being a violation of the condition of the rules in the policy, the Appellant is to pay and then recover the compensation paid, by **due process of law** from the owner of vehicle no. **WB-19A-6476,** the respondent no. 4 herein.

23. **The appeal being FMAT 1577 of 2009 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

24. No order as to costs.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

28. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)