

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 961 of 2013
With
IA No. CAN 1 of 2023

Sulekha Mondal & Ors.
Versus
Oriental Insurance Co. Ltd. and Anr.

For the Appellants : Mr. Amit Ranjan Roy, Adv.

For the Respondents/Ins. Co. : Mr. Sanjoy Paul, Adv.

Heard on : 11.12.2023

Judgment on : 05.01.2024

Ajay Kumar Gupta, J:

CAN 1 of 2023

1. Learned advocate appearing on behalf of the appellants/claimants moved an application for condonation of delay of 352 days in preferring the instant appeal. He referred paragraph Nos. 5 and 8 of the said application to show the sufficient cause prevented in filing the appeal within the prescribed period of limitation under Section 173(1) of the Motor Vehicles Act, 1988. He prays for condonation of delay for admitting the appeal and hearing of appeal for substantive justice.
2. On the other hand, learned advocate appearing on behalf of the respondent no. 1/insurance company raised objection of such prayer for condonation of delay.
3. Having heard the submissions of both sides and on perusal of the application, it appears the cause shown by the appellant is sufficient, satisfactory and accepted. Hence, delay in filing appeal is hereby condoned.
4. Accordingly, **CAN 1 of 2023** is, thus, disposed of.

FMAT No. 961 of 2013

5. This instant appeal has been filed by the appellants/claimants being aggrieved and dissatisfied with the judgment and award dated 21.05.2012 passed by the Learned Judge, Motor Accident Claims Tribunal, Purba Medinipur in Motor Accident Claim Case No. 96 of 2009 thereby the learned Tribunal allowed the claim application in part and awarded a sum of Rs. 4,17,500/- along with simple interest at the rate of 9% per annum from the date of filing of the case i.e. from 12.03.2009 till the date of its final payment from the insurance company in an application filed under Section 166 of the Motor Vehicles Act, 1988 on the death of the deceased, Srimanta Mandal caused due to motor traffic accident.

6. The brief facts are relevant for the purpose of deciding this appeal as follows:

On 13.01.2009 at about 1.50 pm, when the deceased was travelling on his motor cycle bearing no. WB-30 F/1640 from Mechada side towards Deulia side, at that time, a Lorry bearing registration no. RJ-02 GA/0938 was proceeding from Kolaghat side at a high speed and suddenly dashed the motor cyclist along with his pillion-rider. As a result,

the deceased sustained injuries and died on the spot. Over the matter, Kolaghat P.S. Case No. 06/09 dated 13.01.2009 under Sections 279/304A IPC was started against the accused/driver of the offending vehicle. A charge sheet has been submitted after completion of investigation. The Oriental Insurance company Ltd. contested the claim case by filing written statement wherein all the material allegations as to the manner of the accident and also the insurance coverage of the offending vehicle was denied and disputed. The Insurance Co. also prayed for taking necessary defence available to the owner of the vehicle and filed a petition u/s 170 of the M.V. Act. According to the respondent No.1/insurance company, the claim is excessive, abnormal and without any legal and equitable basis as such, the claimants are not entitled to get such amount of compensation. However, the owner of the offending vehicle did not contest the case.

7. Learned advocate appearing on behalf of the appellants/claimants submitted that there is no dispute regarding the date, time and manner of accident and death of the victim caused due to motor traffic accident. It is also not disputed that the learned Tribunal has held that the accident was occurred due to the negligent driving of the driver of the offending vehicle. The learned Tribunal however, awarded a compensation to the tune of Rs. 4,17,500/- without awarding compensation towards future prospect and actual general damages. Though the claimants are entitled future prospect

and actual general damages in view of the Hon'ble Supreme Court Judgment delivered in **National Insurance Company Limited vs. Pranay Sethi & Ors**¹. It is further submitted that no Correct Multiplier has been assessed by the Learned Tribunal in view of the age of the victim on the date of accident. Learned Tribunal erred while taking multiplier as 17 in place of 18. He prays for enhancement of the compensation.

8. Per contra, learned Advocate appearing on behalf of the respondent No. 1/Ins. Co. submitted that the learned Tribunal has allowed the compensation excessively to the tune of Rs. 4,17,500/-. There is no need to further enhancement of compensation. Learned Tribunal has already allowed the general damages as Rs. 9,500/-as loss of state, funeral expenses and consortium. So, question of further addition of general damages does not arise at all. It is further submitted that the interest awarded by the Learned Tribunal is also excessive. It should be @ 6 % per annum. He prays compensation awarded by the Learned Tribunal may be modified in accordance with law.

9. Having heard the rival submissions of parties and on perusal of the record, judgement and award , this Court finds there is no disputes regarding date, time and manner of accident and death of victim due to

¹ (2017) 16 SCC 680

road traffic accident but the dispute here is whether Learned Tribunal has assessed compensation rightly or excessive or not in accordance with law?

10. The appellants have filed an application under Section 166 of the Motor Vehicles Act, 1988 for compensation due to sudden death of victim due to motor traffic accident and in such a case the appellants/claimants have to prove rash and negligent driving of the driver of the offending vehicle. Appellants have succeeded in proving the rash and negligent driving of the offending vehicle and its involvement in the alleged accident. It is further proved that the offending vehicle was under the valid insurance policy on the date of accident as such the Learned Tribunal assessed the total compensation to the tune of Rs. 4,17,500/= considering the income of the victim as Rs. 3,000/= as notional income. Learned Tribunal also included a sum of Rs. 9,500/= as general damages and deducted 2/3rd personal expenses of the victim from total income. However, no future prospect added with the total income though the appellants/claimants are entitled to get future prospect 40% since the victim was less than 40% and general damages to the tune of Rs.70,000/= in view of judgment of the Hon'ble Supreme Court delivered in **National Insurance Company Limited vs. Pranay Sethi & Ors.**

11. While calculating the compensation amount, the Learned Tribunal taken multiplier as 17 considering the age of 23 years old on the date of accident. So, this Court has to decide whether a multiplier would be 17 or 18. Claimants have proved that the victim was 23 years at the time of accident and Learned Tribunal also accepted his age as 23 years old. So, it can be safely accepted that the victim died at age of 23 years which comes within the age group of 15 to 25 years and for that actual multiplier would be 18 in view of observation made in **Sarla Verma and others vs. Delhi Transport Corporation and Another**² and subsequently, a Larger Bench of the Hon'ble Supreme Court affirmed the said manner of selection multiplier in **National Insurance Co. Ltd Vs. Pranay Sethi & Others** by indicating therein that the selection of multiplier shall be as indicated in the paragraph in **Sarla Verma's** case as inter alia as follows:

M-18 for (15 to 25 years)

M-17 for (26 to 30 years)

M-16 for (31 to 35 years)

M-15 for (36 to 40 years)

M-14 for (41 to 45 years)

M-13 for (46 to 50 years)

M-11 for (51 to 55 years)

M-9 for (56 to 60 years)

² (2009) 6 SCC 121

M-7 for (61 to 65 years)

M-5 for (66 to 70 years)

12. Keeping in mind of the above observations and judgments of the Hon'ble apex court, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Add: 40% Future Prospect	Rs. 1,200/-
Total Income	Rs. 4,200/-
Annual Income (4,200/- X 12)	Rs. 50,400/-
Total income (Rs. 50,400 X 18)	Rs. 9,07,200/-
Less 1/3 rd for personal expenses	Rs. 3,02,400/-
Total Income after deduction	Rs. 6,04,800/-
Add: General Damages	Rs. 70,000/-
Total amount after adding general damages	Rs. 6,74,800/-
Less Principle awarded	Rs. 4,17,500/-

received	
Total enhanced Compensation after Deduction	Rs. 2,57,300/-

13. Thus, the appellants/claimants are further entitled to get enhanced compensation amount to the tune of Rs. 2,57,300/= (Rs. Two Lakhs Fifty-Seven Thousand Three Hundred only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 12.03.2009 till final payment.

14. It is informed that the appellants/claimants have already received the compensation amount of Rs. 4,17,500/- in terms of the award of the learned Tribunal as such interest would be calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. from 12.03.2009 till final payment, if not already paid.

15. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2,57,300/= (Rs. Two Lakhs Fifty-Seven Thousand Three Hundred only) together with the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

16. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the enhanced awarded compensation amount as well as compensation awarded by the learned Tribunal as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid. Registrar General shall fix the deposited amount in short term fixed deposit, automatically renewal basis scheme till actual payment in any nationalised bank.

17. The impugned judgment and award of the learned Tribunal dated 21.05.2012 is modified to the extent only as aforesaid.

18. With the above observations, the instant appeal being **FMAT 961 of 2013** stands disposed of without order as to costs.

19. Let a copy of this Judgment along with Lower Court records, if received be sent back to the learned Tribunal forthwith for information.

20. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)