

30.01.2024
SL No.3
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**FMAT 1365 of 2019
With
IA No.:CAN/2/2023**

**Priyanka Ghosh & Anr.
Vs.
Md. Naushad Ahemed & Ors.**

Mr. U. S. Chattopadhyay,
Ms. Trisha Rakshit
.....for the appellant/claimant.

Ms. Sucharita Paul
..... for the respondent No. 2/Insurance Co.

In Re.: CAN 2 of 2023

This is an application for restoration by recalling the order dated September 4, 2023 passed by a Co-ordinate Bench of this Court.

Learned advocate for the petitioner submits that the advocate on record for the appellant was engaged in another Court. Consequently, he could not appear before the learned Court on call; he prayed for restoration.

Heard the learned advocates perused the materials on records perused the grounds in CAN 2 of 2023; considering the grounds it appears that non- appearance of the learned advocate before this bench is satisfactory. Accordingly, the order dated 4.9.2023 is hereby recalled. The order for dismissal is hereby set aside. The FMAT 1365 of 2019 along with connected CAN application are hereby restored to its original file and number.

In Re.: CAN 1 of 2022

This is an application for condonation of delay.

The report of the Stamp Reporter suggests that there are 100 days delays in preferring the instant appeal.

Learned advocate for the respondent raises strong objection.

Heard the learned advocates perused the application being CAN 1 of 2022. Considering the ground made therein it appears to me that the grounds are sufficient. Accordingly, CAN 1 of 2022 is allowed. The delay in preferring the instant appeal is hereby condoned.

The respondent No. 2 i.e. National Insurance Company has already made his appearance through Mr. Paul. The respondent No. 1 is the owner of the offending vehicle who did not contest the matter before the learned tribunal. Accordingly, the instant appeal is taken up for hearing.

FMAT 1365 of 2019

The instant appeal is preferred against the judgment and award dated 11th Day of June, 2019, passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan, Purba Bardhaman, in M.A.C. Case no. 25 of 2017 under Section 166 of the M.V. Act.

The brief facts of the case is that the present appellants being the claimants have preferred an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim case was contested by the Insurance Company by filling written statement.

After hearing the parties and after receiving the evidences on record, the learned tribunal has awarded a sum of Rs.30,21,552/-in favour of the claimants

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

Learned advocate appearing on behalf of the appellants Ms. Trisha Rakshit submits that the sole ground for filing the instant appeal is that the learned tribunal has not considered the future prospects in this case by virtue of the decision of Hon'ble Apex Court passed in **Pranay Sethi**. She further argued that the learned tribunal should have awarded the future prospects to the tune of 50% of his establish income. The learned tribunal has

committed error for not awarding the future prospects.

Learned advocate appearing on behalf of the Insurance Company Ms. Sucharita Paul submits that the learned tribunal has committed no error in passing the impugned judgment. He has considered the pay slip as well as the evidences on record and passed the just order. However, Ms. Paul pointed out that the multiplier adopted by the learned tribunal is erroneous. The deceased was within the age group of 36 to 40 years; according to the observation of Apex Court in **Sarla Verma**, the applicable multiplier would be 15. The learned tribunal has erroneously adopted the multiplier 16. She further argued that at the time of assessing the monthly income of the deceased. The learned tribunal has failed to deduct the professional tax component from the monthly income, so the monthly income was assessed more to that of the applicable in this case. So, he prayed for just and proper compensation of this case.

However, Ms. Paul, submits that by virtue of decision of Hon'ble Apex Court the claimants are entitled to get the future prospects.

Heard the learned advocates perused the materials on record also perused the pay slip of the deceased for the month of August 2016. Wherefrom it appears that the total earning for the month of

August, 2016 of the deceased was 23,059.25/- and the professional tax was i.e. Rs. 130/-. In calculating the compensation the tax component has to be deducted from the monthly income.

According to the observation of the Hon'ble Supreme Court passed in **Sarla Verma** the multiplier should be 15 considering the age of deceased 36 years. However, the claimants are entitled to get the future prospects according to the observation of the Hon'ble Supreme Court in **Pranay Sethi**. The deceased was in permanent job within the age of 40 years. So, the claimants are entitled to get the 50% of the establish income of the deceased towards the future prospects. So, considering the entire facts of this appeal, the award passed by the learned tribunal need be modified:-

Calculation of compensation

1. Monthly Income	:Rs.23,059/-
2. Less: Professional Tax	:Rs. 130/-
	:Rs. 22,929/-
3. Annual Income (Rs. 22,929/- X 12)	:Rs.2,75,929/-
4. Add:50% Future prospects	:Rs.1,37,574/-
	:Rs. 4,13,503/-
5. Multiplier 15 (Rs.4,13,503/- X 15)	:Rs.62,02,545/-
6. Less; 1/3 rd for personal Expenses	:Rs.20,67,515/-
	:Rs.41,35,030/-
7. Add: General Damages	:Rs. 70,000/-
	:Rs.42,05,030/-
8. Less: Principal award already received	:Rs.30,21,552/-
	Rs.11,83,478/-

After calculation the just and proper compensation of this case comes to Rs. 42,05,030/-. The learned tribunal has already awarded a sum of Rs. 30,21,552/- so the balance award comes to Rs. 11,83,478/-. The award shall carry 6% interest from the date of filing of the claim application.

The insurance company is directed to pay the balance compensation alongwith interest as directed above through the office of the learned Registrar General, High Court, Calcutta within six weeks from the date of passing of this order. After such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same equally by two account payee cheques in the name of the appellants. The payment of compensation is 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 received the deficit court Fees, if any.

The instant FMAT 1365 of 2019 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

