26.02.2024
Mithun
Sl. No. 06
Ct. No. 551

FMAT(MV) 777 of 2023

Mamtaj Bewa & Ors.
-Vs.-
United India Insurance Company Ltd & Anr.

Mr. Krishanu Bankk,
Mr. Tathagata Banik

…for the appellants.

Ms. Sucharita Paul

…for the respondents.

The instant appeal is preferred against the judgment and award dated 21.11.2009 passed by the learned Judge, Motor Accident Claims Tribunal, Balurghat in MAC Case No.108 of 2007. The claimants have preferred the instant appeal against the said award. The brief fact of the case is that the present appellants being the claimants filed the application before the learned Tribunal under Section 163-A of MV Act for getting compensation on the ground that there predecessor was died in a road traffic accident.

The learned Tribunal after hearing the parties and after going through the evidence has dismissed the claim case on the ground that the income of the deceased was mentioned in the claim application to be Rs.4,000/- per month. The yearly income appears to be Rs.48,000/- which is more than Rs.40,000/-. Thus, they are not entitled to get compensation under Section 163A while the annual income is more than Rs.40,000/-.

The claimants again preferred an application under Section 166 of the MV Act before the learned Tribunal, without preferring any appeal against the order of dismissal under Section 163A of MV Act. The learned Tribunal on hearing the application under Section 166 of MV Act is a view that the said application is barred under Section 11 of the CPC under the principle of *res judicata*. Against the same order of dismissal, one appeal is preferred before this Court being FMA No.2848 of 2015. This Court has disposed of the appeal on 23.11.2023, *inter alia*, dismissing the appeal and grant a liberty to the appellants to prefer an appeal against the order of dismissal of initial application under Section 163 of MV Act being MAC Case No.108 of 2007. However, this Court has also waved the period of limitation under Section 14 of the Limitation Act. Hence, this instant appeal has been preferred against the said order of dismissal dated 21st November, 2009 passed in an application under Section 163A of MV Act.

Learned Advocate Mr. Krishanu Banik appearing on behalf of the appellants submits that law of the land regarding application under Section 163A of the MV Act has been considerably changed by an amendment of Section 163 of MV Act since 22nd May, 2018. The amendment suggests, in a death case filed under Section 163A of M.V. Act, the fixed compensation would be 5 lack.

The Division Bench of this Court in ***Urmila Halder Vs. The New India Assurance Company Limited*** has decided the issue that **"Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered thereunder prior to May 22, 2018".** After long discussion, the Hon'ble Division

Bench of this Court has decided the issue in favour of the claimant and is of view that the amendment is not regarding substantive law but about procedural law, thus, it has retrospective effect.

The Hon'ble Bench also decided the issue that in pending applications as well as appeal under Section 173 of the MV Act, the claimant case for death in RTA, filed under Section 163-A of the MV Act would be entitled to get Rs.5,00,000/- along with the interest. The following paragraphs are quoted below:-

"118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

119. In view of the aforesaid discussion, there cannot be any doubt that the appellant is entitled to compensation of a fixed sum of Rs.5,00,000.00 on account of accidental death of the victim, being her daughter, in a road accident involving the use of a motor vehicle."

The Insurance Company has preferred an appeal against the order before the Hon'ble Apex Court and Hon'ble Apex Court has decided the issue on February 8, 2024 and *inter alia* affirmed the decision adopted by the Hon'ble Division Bench of this Court. The following paragraph is quoted below:-

"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."

Considering the present law of the land and considering the obvious decision of the Hon'ble Division Bench and affirming by the Hon'ble Apex Court, I am of the view that in the instant case, the claimants are entitled to get the compensation to the tune of Rs.5,00,000/-.

Mrs. Paul, learned Advocate appearing for the Insurance Company submits that the instant claim application was preferred under Section 163-A of the MV Act in the year 2007. The same was dismissed in the year 2009. Thereafter, the claimants preferred another application under Section 166 of the MV Act and, thereafter, the said application was dismissed and again preferred one appeal and the appeal was finally decided in the year 2023. Now, by virtue of the order passed by this Court in appeal, they preferred the instant appeal. She further argued that Insurance Company must not be penalized by paying interest for the delay caused by the appellants in preferring the instant application or appeal.

In support of her contention, he cited a decision of the Hon'ble Apex Court passed in ***Kajal Vs. Jagdish Chand & Ors***.reported in ***2020 ACJ 1042*** wherein she referred the portion of Paragraph 31. The relevant portion of Paragraph No.31 is quoted below:-

"…..Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the

appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment/deposit of the amount."

Heard the learned Advocates. Perused the materials on record. Also perused the observations of this Court in appeal. It is true that by virtue of the order passed by this Court in FMA No.2848 of 2015 dated 23.11.2023, the present claimants were given liberty to file an appeal and the delay in preferring the appeal has been ordered to be condoned under Section 14 of the Limitation Act.

So, the equity has been provided to the present appellants to prefer the appeal by condoning the delay. The present appellants cannot entitle to get double equity in true sense. Thus, in my view, the appellants are entitled to get the awarded amount of Rs.5,00,000/-since the filing of the claim application till the date of disposal of the same application dated 21.11.2009.

The interest shall be carried along with the awarded amount of Rs.5,00,000/- which must be a simple interest of 6% per annum.

The Insurance Company is directed to pay the compensation together with the interest through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit, the claimants are entitled to get the compensation according to the normal rules.

The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

FMAT (MV)777 of 2023 along with connected applications are accordingly disposed of.

(Subhendu Samanta, J.)