IN THE HIGH COURT AT CALUTT
Civil Appellate Jurisdiction

07.05. 2024
SL No.220 -221
Court No 25.
s.g.

F.M.A.T (MV) 621 of 2022
with
IA. No. : CAN/1/2023, CAN/2/2023, CAN /3/2023
With
COT 80 of 2024

National Insurance Co. Ltd.
Vs.
Dipa Sing & ors.

Ms. Sucharita Paul,
......for the Ins. Com.

Mr. Jayanta Kr. Mondal,
Ms. Sayantan Rakshit,
......for the claimants.

<u>Re.: CAN/1/2023</u>
<u>Re.: CAN/3/2023</u>

In pursuance of the direction passed by this Court dated 21st July, 2023 the Insurance Company has deposited the entire awarded sum of Rs. 12,35,466/- on 6.9.2023. It appears that the Insurance Company could not comply the order by depositing the awarded amount within time. Thus the application being CAN 3 of 2023 was filed for appropriate order. In considering the ground mentioned in CAN 3 of 2023 it appears to me that the Insurance Company was prevented by sufficient reasons for not depositing the awarded amount within the period as mentioned in the Court's order dated 21.7.2023. Thus applications CAN 1/2023 as well as CAN 3 of 2023 is disposed of with a direction that the interim order of stay passed by this Court on the earlier occasion is hereby made absolute and be extended till disposal of the appeal by condoning the delay before depositing the amount of the learned Registrar General, High Court, Calcutta.

Re.: CAN/2/2023

This is application for condonation of delay in preferring the appeal. The stamp reporter suggests the instant appeal is preferred by delay of 136 days. Heard the learned Counsels for the parties, on perusing the grounds mentioned in the body of CAN 2/2023, it appears that grounds are sufficient accordingly, delay in preferring the instant appeal is hereby condoned.

Appeal be formally admitted.

Register the same.

Mr. Mondal appears on behalf of the respondent no. 1 to 3/claimants. Respondent no.5 is the owner of the offending vehicle who did not contest the case before the learned Tribunal, accordingly notice of appeal upon all the respondents are dispensed with.

Learned Counsel submits very short point in involved in the instant appeal and the cross-appeal preferred by the respondent claimants; considering the submission the appeal and the cross-appeal be taken up together for uniformity of the judgement.

The widow, minor son and parents of the victim of this case namely Mansha @ Mansa Singh filed an application under Section 166 of M.V. Act before the learned Tribunal for getting compensation on the ground that the victim of this case died in road traffic accident, on 5.7.2015, due to rash and negligent driving of the driver of the offending vehicle duly insured by the Insurance Company. The claim case was contested by the Insurance Company by filing the written statement. After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs. 11,73,100/- towards the compensation and directed the Insurance Company to pay compensation in favour of the claimants nos. 1,2,and 3.

Being aggrieved by and dissatisfied with the said award the Insurance Company has preferred the instant appeal. The claimants also preferred the cross-appeal on the ground that the interest portion was not appropriately awarded by the learned Tribunal.

Ms. Paul, learned Counsel appearing on behalf of the Insurance Company submits that sole ground of appeal is awarded of parental consortium and filial consortium in favour of the claimants. He submits that the Hon'ble Supreme Court in **National Insurance Ltd. Vs. Pranay Sethi** has observed that the widow of the deceased can only get spousal consortium of Rs. 40,000/-; but the learned Tribunal by virtue of decision of Hon'ble Apex Court passed in **United India Insurance Company Vs. Satindra Kaur** has awarded excess consortium under the heading of parental consortium as well as filial consortium. She submits that observation of the learned Tribunal is erroneous that on the ground Hon'ble Apex Court in the Constitutional Bench **(Pranay Sethi)** has declared the correctly.

Mr. Mondal, learned Counsel appearing on behalf of the claimant submits that the learned Tribunal at the time of awarding of compensation allowed the interest as @ 6% per annum, not from date of filing of the clam application but from the date of framing of issues. He submits that the observation of the learned Tribunal is erroneous; according to the provision of Section 171 of MV Act the compensation shall carry simple interest from the date of filing of the claim case. So he prayed for necessary modification.

Heard the learned Counsel perused the materials-on-record. The award is only challenged on the point of the award of consortium passed by the learned Tribunal. It appears that leaned Tribunal by virtue of decision of Hon'ble Apex Court in **Satindra Kaur** (supra) has awarded parental consortium as well as filial consortium of Rs. 44,000/- each. It appears that this Court is under active consideration of the same point in separate appeal regarding the award of compensation, however the Division Bench of this Court on earlier occasion has adopted the view that this Court can only award consortium by virtue of decision of the Hon'ble Apex Court in **Pranay Sethi (**supra) which is five Judges' Bench. Considering the same aspect it appears to me learned Tribunal has misguided himself by not following the decision of the Hon'ble Apex Court passed by five Judges' Bench in **Pranay Sethi** (supra). Thus in this case it appears that the learned Tribunal has awarded Rs. 88,000/-extra towards the parental consortium as well as filial consortium; so the award passed by the learned Tribunal requires modification. Learned Tribunal awarded of Rs. 11,73,100/-; after deduction of Rs. 88,000/- just and proper compensation of this case comes to Rs. 10,85,100/-.

In considering the grounds in the cross-appeal, it appears that, learned Tribunal has order that the award shall carry 6% interest per annum from the date of framing of issues. Learned Tribunal has further observed that though the case was instituted on 7.10.2015 but the actual issues framed on 17.5.2015. It was further observed claimants made no attempt for early disposal of the case.

It is necessary to observe here is that, after filing a civil case several steps and requisite formalities has to be complied with according to the provision of the Code of Civil Procedure. Learned Tribunal has allowed the claimants to take the steps. There may have some delay to take appropriate steps in time, but this delay does not permit the learned Tribunal to decrease the award of interest. Moreover, all occasions learned Tribunal has allowed the prayer of the claimants to take steps. Considering the same, I find no justification in the finding of the learned Tribunal to disregard the statutory mandate under Section 171 of the MV Act.

It is ordered that the award shall carry 6% interest per annum from the date of filing of the claim application, that is from 7.10.2015.

It appears that the Insurance Company at the time of filing of this appeal has deposited statutory deposit of Rs. 25,000/- on 29.12.2022 and thereafter deposited Rs. 12,35,466/-; the total amount deposited by the Insurance Company appears to be Rs. 12,60,466/-. The same was invested by the Office of the learned Registrar General, High Court, Calcutta, which must have accrued some interest.

Office of the learned Registrar General, Calcutta has directed to calculate the award passed by this Court and disburse the same in favour of the respondent no. 1, 2 and 3 equally within four weeks. After receipt, the claimants are further directed to inform the Insurance Company regarding the amount they have received from the Office of the learned Registrar General, High Court, Calcutta along with their bank particulars to the Office of the learned Tribunal, on which they shall disburse the balance amount as per direction of this Court directly to the bank account of the claimants within 6 weeks thereafter.

Payment of compensation is subject to ascertainment of payment of deficit Court fee, if any. Office of the learned Tribunal shall act upon the certified copy of the order to receive the deficit Court fee, if any.

Accordingly, FMAT (MV) 621 of 2022 with COT 88 of 2024 with all connected applications, if pending are disposed of.

Interim order, if any, stands 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.)