

04.12.2023
25
AN/Ct. No.551

FMAT(MV) 111 of 2023
with
I.A. No. CAN 1 of 2023

Champa Chattaraj & Ors.
versus
The National Insurance Company Limited & ors.

Mr. Amit Ranjan Roy
... for the appellant company

Mr. Rajesh Singh
... for the respondents

In Re: CAN 1 of 2023

This is an application for condonation delay in connection with the instant appeal. Learned counsel for the appellant submits that there are 262 days delays in preferring the instant appeal. The appellant was prevented by sufficient cause to prefer the appeal in time, so the delay may be condoned.

Learned counsel for the Insurance Company raises strong objection.

Considering the submissions of the learned counsel for the parties and the grounds mentioned in the application itself, it appears to me that the grounds are sufficient and so the delay in preferring the appeal is condoned and the appeal is admitted. Hence, CAN 1 of 2023 is allowed and disposed of.

In Re: FMAT(MV) 111 of 2023

The instant appeal is preferred against the judgment and award dated 29.02.2020 passed by the learned Judge of the

Motor Accident Claim Tribunal, Asansol, Paschim Burdwan in MAC Case No. 51 of 2016 (40/15) under Section 166 of the Motor Vehicles Act, 1988. The claimants are appellants here. Respondent no. 1 has already made appearance. Respondent no. 2 is the owner of the offending vehicle, who did not contest the matter before the learned Tribunal. Accordingly, notice of appeal for the respondents is dispensed with.

Learned counsel for the appellants submits that there is a short point involved in the appeal so, the appeal can be disposed of by considering the submissions of the parties. He further argued that for the purpose of speedy disposal of the appeal, he has prepared the informal paper book containing pleadings and proofs, both oral and documentary of the L.C.R. The informal paper book is handed over and taken on record.

It appears that the instant appeal is preferred by the claimants who filed an application 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 was contested by the Insurance Company. The learned Tribunal after hearing the parties and after receiving the evidence has allowed the claim case in favour of the claimants by directing the Insurance Company to pay a compensation amounting to Rs. 43,86,000.00 alongwith interest @ 6% p.a. By virtue of the directions of the learned Tribunal, the Insurance Company has already deposited the entire awarded sum alongwith the interest before the learned Tribunal and which was received by the claimants/appellants. Now, the claimants are before this Court

only on the ground that at the time of assessing the compensation, the learned Tribunal has failed to award the Future Prospects in terms of the directions of the Hon'ble Supreme Court passed in the case of **Pranay Shetty**. He further argued that the claim of the Future Prospects was argued before the learned Tribunal, the learned Tribunal has discussed the matter in the body of the award but did not allow the Future Prospects in favour of the claimants. So, he prayed for just and proper compensation by virtue of Future Prospects.

Learned counsel for the Insurance Company submits that the learned Tribunal has gone into the merits of this case and after careful perusal of the materials on record has passed the appropriate just and proper compensation. The claimants have already received the award, at this juncture the filing of the instant appeal has become infructuous.

Heard learned counsel for the parties and perused the materials on record.

It appears that the deceased was an employee of ECL, J.K. Nagar Colliary, Fire Project. At the time of assessing compensation, the learned Tribunal has correctly assessed the annual income of the deceased and multiplier was also correctly assessed to be 13. The learned Tribunal has also awarded general damages of Rs. 70,000.00 in terms of the judgment of the Hon'ble Supreme Court in the case of **Pranay Shetty** but it appears that the direction of the Hon'ble Supreme Court in the case of **Pranay Shetty** relating to Future Prospects was not allowed, however, it was not mentioned or discussed by the learned Tribunal in the body of the judgment that why it was denied.

Considering the same, this Court is of the opinion that it would be proper to award the Future Prospects to the tune of 30% to the actual income of the deceased in favour of the claimants. On that score, the impugned judgment passed by the learned Tribunal needs modification. The just and proper compensation of this case be assessed as follows:

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|--|-----------------------------|
| Annual Income | Rs. 4,98,000.00 |
| Less 1/3 personal expenses | (-) <u>Rs. 1,66,000.00</u> |
| | Rs. 3,32,000.00 |
| Add 30% Future Prospect | (+) <u>Rs. 99,600.00</u> |
| | Rs. 4,31,600.00 |
| Multiplies 13 (4,31,600x13) | Rs. 56,10,800.00 |
| Add General Damages | (+) <u>Rs. 70,000.00</u> |
| | Rs. 56,80,800.00 |
| Less Award passed by the Tribunal already paid | (-) <u>Rs. 43,86,000.00</u> |
| ENHANCEMENT | Rs. 12,94,800.00 |

After the above calculation, the just and proper compensation of this case is Rs. 56,80,800.00. Learned Tribunal has already awarded Rs. 43,86,000.00. The balance award comes to Rs. 12,94,800.00. The respondent National Insurance Company Limited is directed to pay the balance compensation alongwith 6% p.a. from the date of filing of the claim application i.e. from 04.03.2015 within a period of six weeks from this date through the Office of the learned Registrar General of the Court; and on such deposit, the Office of the learned Registrar General shall disburse the amount in favour of the claim vide three equal account payee cheques in the name of the claimants subject to the ascertainment of the payment of the requisite Court fees.

With the above observations and directions, the instant appeal alongwith the connected application are **disposed of**.

(Subhendu Samanta, J.)