Ct. No. 26

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08.11 2021

F.M.A. 121 of 2001

Sipra Roy & Ors.

Vs.

The Oriental Insurance Co. Ltd. & Anr.

(Via Video Conference)

Mr. Saidur Rahaman ...For the Appellants/Claimants

Mr. Rajesh Singh ...For the Respondent/Insurance Co.

Re.: IA No. CAN 4 of 2019 (Old No. 12222 of 2019).

This is an application for expunging the name of Nilima Roy, the claimant/appellant No. 3, who died intestate on February 19, 2017 and also for noting of attainment of majority of claimant No. 2, Indrani Roy, who became major on July 10, 2008, having date of birth on July 10, 1990.

Since the original application is not found in the file, photostat copy of the application is taken on record by treating the same as original one.

Considering the materials placed on record and submissions made by the parties, I am inclined to allow the said application. The deceased appellant N. 3 has left behind two legal heirs and both are already on record in the cause title of the Memorandum of Appeal, being appellant Nos. 1 and 2, namely Sipra Roy and Indrani Roy.

The department is directed to expunge the name of appellant No. 3, Nilima Roy from the cause title of the Memorandum of Appeal.

The claimant No. 2 Indrani Roy, be treated and noted as major.

The application is disposed of.

F.M.A. 121 of 2001.

This appeal is directed against the judgement and award dated August 12, 1997 passed by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri in M.A.C. Case No. 93 of 1996 on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 35 years old 'Manoj Kumar Roy' in a vehicular accident dated December 20, 1995. Deceased was an employee of 'Dhupguri Sukanta Mahavidyalaya'.

Various points have been raised by the claimants in the instant appeal challenging the quantum of compensation. Claimants submit that victim was getting Rs.2,343/- as gross monthly salary but learned Judge erred in considering the income of the victim at Rs.1,500/- per month. It is further submitted that claimants were not granted any amount under 'future prospect'. The appellants plead that they were not given full component of general damages and deduction of personal expenses should be 1/3rd of the victim's income. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the Tribunal.

The claimants however admit that considering the age of the deceased, the correct multiplier should be of '16' purchase factor.

Per contra, learned Counsel representing the Insurance Company argues that in the facts and circumstances of the case, the award is just and reasonable and there is no further scope of enhancement of the same.

Considering judgments of the Hon'ble Apex Court in the cases of ***Smt. Sarala Verma & Ors. –Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121** and in the case of **National Insurance Company Limited -Vs.- Pranay**

Sethi & Ors., reported in **(2017) 16 SCC 680**, I find substance in the submissions of the appellants/claimants. Victim was getting a gross monthly salary of Rs.2,343/- and as an abundant caution, after deducting Rs.143/- for statutory deductions, the net salary of Rs.2,200/- is taken for assessment of compensation. Considering the age of 35 years of the victim, the multiplier of 16 would be applicable and 'future prospect' of 50% is to be given to the claimants. Appellants are also entitled to Rs.70,000/- under collective heads of general damages.

Accordingly, the impugned award is required to be modified and recalculated in the manner referred hereinafter.

Monthly Income	**Rs. 2,200/-**
Annual Income	**Rs. 26,400/-**
Add: 50% future prospect (Rs.13,200/-)	**Rs. 39.600/-**
Less 1/3rd for personal expenses (Rs.13,200/-)	**Rs. 26,400/-**
Multiplier '16'	**Rs. 4,22,400/-**
Add 'General Damages'	**Rs. 70,000/-**
TOTAL Principal Compensation	**Rs. 4,92,400/-**
LESS – awarded by Tribunal and paid by insurer	**Rs. 3,00,000/-**
BALANCE (enhancement)	**Rs. 1,92,400/-**

The claimants acknowledge receipt of the awarded amount of Rs.3,00,000/- along with interest in terms of direction of the Tribunal. Accordingly, the balance enhanced sum of Rs.1,92,400/- would become payable to the appellants by the Insurance Copmpany, together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the appellants. The share of deceased appellant No. 3 is to be equally distributed to the appellant Nos. 1 and 2.

Learned Counsel for the appellants will forward the bank account details of the appellants within a fortnight from date to the learned Counsel for the Insurance Company.

The payment shall be made to the claimants' bank accounts directly through RTGS / NEFT, in the proportion decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of disposal of this appeal, connected applications, if any, are also disposed of. The concerned Department is directed to tag the applications, if any with the main appeal.

There shall be no further order as to costs.

LCR, if any, may be returned back to the Court below.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)