16.08.2021
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(Via Video Conference)

F.M.A. 434 of 2019

Fulijan Bibi & ors.
Vs.
M/s. New India Assurance Co. Ltd. & anr.

Ms. Sima Ghosh
...For the Appellants/claimants.

Ms. Sucharita Paul
... for the respondent/Insurance Co.

The above appeal has been filed by the claimants against the judgement and order dated 6th March, 2018, passed by the learned Judge, 5th Motor Accident Claims Tribunal, Murshidabad, in M.A.C. Case No.847 of 2015, on a claim under Section 166 of the Motor Vehicles Act, 1988.

The appellants state that the 52 years old victim was a government employee, working in the post of Cultivation Attendant with the office of Deputy Director of Textiles, (Sericulture), Murshidabad. Accordingly, the claimants are entitled to 15% on account of future prospects of the victim and Rs.70,000/- under the collective heads of general damages in view of the law as it stands now after the judgment delivered by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors***., reported in ***(2017) 16 SCC 680***. The appellants further submit that the deduction on account of personal expenses of the deceased should be 1/4th instead of 1/3rd, in view of Hon'ble Supreme Court's decision in the case of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport***

Corporation & Anr., reported in ***(2009) 6 SCC 121***. It is also submitted that the claimants were receiving family pension and had also received a sum of Rs.7,00,000/- from the employer of the deceased. The learned court below took note of such facts and arbitrarily deducted the said sum of Rs.7,00,000/- from the total amount of compensation which was assessed. The claimants rely on the dictum of Hon'ble Supreme Court in the cases of ***Mrs. Helen C. Rebello vs Maharastra State Road Transport Corporation***, reported at ***1999 (1) SCC 90*** and ***Vimal Kanwar & Ors. –Vs.– Kishore Dan,*** reported at ***(2013)*** *7* **SCC** ***476***.

The insurance company is represented.

This Court finds justification in the arguments made by the appellants. Hon'ble Supreme Court has made it amply clear in ***Vimal Kanwar*** (supra) that *"...Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction...".*

The observations made in the cases of ***Vimal Kanwar*** (supra) and ***Helen C. Rebello*** *(supra),* have been upheld in a number of other judgements by Hon'ble Supreme Court. Therefore, this Court finds that the claimants are entitled to the amount of Rs.7,00,000/- which has been deducted by the tribunal.

The other grounds, raised by the appellants, being addition of income on account of future prospect and collective heads of general damages, are also allowed. The deduction on account of personal expenses should be 1/4th in this case.

Accordingly, on such basis and considering the submissions as advanced by the learned advocates for the parties, the impugned award is modified and reassessed as follows:

Particulars		Amount (Rs.)
Monthly income		23,124.00
Less professional tax		130.00
		22,994.00
Add 15% future prospect	(+)	3,449.10
		26,440.00 (rounded off)
Annual Income X 12		3,17,280.00
Less: 1/4th personal expenses	(-)	79,320.00
		2,37,960.00
Multiplier of '11' to be used		26,17,560.00
Collective heads of General Damages	(+)	70,000.00
		26,87,560.00
Less: Awarded amount	(-)	16,79,100.00
Differential amount		**10,08,460.00**

The claimants acknowledge receipt of the entire awarded amount of Rs.16,79,100/- along with interest. The balance amount of Rs.**10,08,460**/- would become payable to the claimants by the Insurance Company together with interest assessed @ 6 per cent per annum, 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 claimants. Learned Advocate for the claimants will forward the bank account details of the claimants within a fortnight from date to the learned Advocate for the Insurance Company. The payment shall be made in the proportion decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of the 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 will be no order as to costs.

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.)