

S/L 13
26.7.2021
Court No.26
AD

FMA 433 of 2019
(Via Video Conference)

Smt. Asha Gorai & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Jayanta Mondal

...for the Appellants/Claimants.

Ms. Sucharita Paul

...for the Respondent/Insurance Company.

The above appeal has been filed by the claimants against the judgement and award dated 10th April, 2018, passed by the Learned Judge, Special Court Cum-Additional District Judge & Judge, Motor Accident Claims Tribunal, Durgapur, Burdwan, in M.A.C. Case No.33 of 2013 (198/11) on a claim under section 166 of the Motor Vehicles Act, 1988.

The appellants rely on the dictum in *Nagappa -Vs.-Guru Dayal Singh & Ors*, reported in [2003] 2 SCC 274 and submit that the learned Court below erred in not awarding 'just compensation' to the claimants/appellants. Since the claimants had claimed a sum of Rs.29,00,000/- in their claim application, the learned Tribunal had erroneously restricted the award to Rs. 29,00,000/- only, in spite of assessing an amount of Rs. 42,14,535/- as the total compensation. It is further submitted that considering 4 nos. of dependents, the deduction on account of personal expenses should have been 1/4th instead of 1/3rd in view of the law as it stands now after the judgments delivered by the

Hon'ble Supreme Court in the case of *Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*, reported in (2009) 6 SCC 121.

Mrs. Paul, the Ld. Advocate appearing on behalf of the Insurance Company submits that the correct multiplier in the instant case should be 15 instead of 16, as adopted by the learned Court below, in view of the *Sarla Verma* (supra) and amount granted under the collective heads of general damages should have been restricted to Rs.70,000/- only, in view of the judgement passed by Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680.

This Court finds substance in the arguments made by both the parties. Accordingly, the impugned award is modified and reassessed as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Annual income	2,69,500.00
Less: 1/4th personal expenses	<u>(-) 67,375.00</u>
	2,02,125.00
Add 40% future prospect	<u>(+)80,850.00</u>
	2,82,975.00
Multiplier of 15 to be used	<u>(x) 15</u>
	42,44,625.00
Collective heads of General Damages	<u>(+) 70,000.00</u>
	43,14,625.00
Less: Awarded amount	<u>(-) 29,00,000.00</u>
Differential amount	<u>14,14,625.00</u>

The claimants acknowledge receipt of the entire awarded amount of Rs.29,00,000/- along with interest. The balance amount of Rs. 14,14,625/- 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. Advocate for the claimants will forward the bank account details of the claimants within a fortnight from date to the 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.

There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

The concerned Department is directed to tag the applications, if any, with the main appeal.

The Registry is directed to send down the lower court records at once, if received by this time.

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.)