

Ct. 14.7
No. 26
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akb
2021

F.M.A. 70 of 2012
(Via Video Conference)
Smt. Janmoni Gogoi & Ors.
Vs.

The Oriental Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy	...For the Appellants/Claimants
Mr. Sanjay Paul	...For the Respondent/Insurance Co.
Mr. Phiroze Edulji	...For the Respondent

The appeal is directed against the judgment and award dated January 31, 2011 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, 3rd Court, Nadia, in M.A.C. Case No. 93 of 2006.

The facts of the case are not in dispute. Learned Counsel for the appellants/claimants submits that the

The learned Advocate for the appellants/claimants submits that the learned Tribunal committed error in law while holding 40% contributory negligence on the part of the deceased but fact remains that the charge-sheet issued against the driver of the insured lorry.

He further submits that the learned Tribunal committed error in law while not granting 50% additional income towards future prospect since the deceased was 29 years old permanent employee of B.S.F. under Govt. of India.

He submits that the learned Tribunal committed error in law while deducting 1/3rd instead of 1/4th income of the deceased towards personal expenses of the deceased.

He submits that the learned Tribunal committed error in law while granting Rs.9,500/- instead of Rs.70,000/-.

In reply Mr. Sanjay Paul, the learned Advocate for the respondent Insurance Company submits that the

award passed by the learned Tribunal is absolutely just and there is no scope of interference and/or modification of award.

Mr. Paul further submits that the learned Tribunal committed error in law while adopting multiplier 18 instead of 17 since the deceased was 29 years old at the time of accident. Regarding assessment of monthly income there is no dispute.

Considering the judgments of *Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*, reported in (2009) 6 SCC 121 and *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680 this Court finds that the appellants are justified in praying for 50% addition on account of ‘future prospect’ on the income of the deceased since the victim was 29 years old as per service record. Since the deceased leaving 4 dependants behind him 1/4th shall be the deduction towards personal expenses of the deceased and general damages shall be Rs.70,000/- instead of Rs.9,500/- and the multiplier shall be 17 instead of 18. Regarding contributory negligence this Court does not wish to interfere with the findings of the Tribunal and maintain 60% against the lorry and 40% against the deceased.

Considering the ratio as decided in *Sarala Varma (Supra)* as well as *Pranay Sethi (Supra)*, the award passed by the Tribunal is modified and recalculated as follows :

Monthly income	Rs. 7,400/-
50% Additional Income toward future prospect	Rs. 3,700/-
	Rs. 11,100/-
Annual Income (11,100 X 12)	Rs. 1,33,200/-
1/4th deduction on personal Expenses	Rs. 33,300/-
Loss of annual dependency	Rs. 99,900/-

Multiplier 17 (99,900 X 17)	Rs.16,98,300/-
General Damages	Rs. 70,000/-
Less 40% contributory negligence	Rs. 7,07,320/-
Total Compensation	Rs.10,60,980/-

Mr. Roy acknowledges that his clients have already received the entire awarded sum of Rs.6,48,860/- together with interest and which has been paid by the Insurance Company. The differential amount comes to Rs.4,12,120/- which shall carry interest at the rate of 6 per cent per annum from the date of claim application till the balance sum paid to the appellants within a period of 45 days from the receipt of the particular of their bank accounts to be supplied by the learned Counsel to the learned Counsel for the Insurance Company.

It is made clear that the payments shall be made by NEFT/RTGS in the same manner and proportion as decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of disposal of the appeal, connected application, if any, is also disposed of. The concerned Department is directed to trace out the application and tag the same with this 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.)