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F.M.A. 275 of 2019
With
CAN 1 of 2018 (Old No. CAN 7116 of 2018)

The New Indian Assurance Company Ltd.
Versus
Seema Sarkar & Ors.

Mr. Rajesh Singh
... for the appellant.

Ms. Sima Ghosh
... for the respondents.

Learned advocates for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process.

It is submitted by the learned advocate for the appellant/ insurance company that the appeal may be disposed of on the basis of materials furnished by both the parties to this case, which is not opposed by the learned advocate representing the claimants.

When learned advocates for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

This is an appeal of Insurance Company and is directed against the judgement and award dated 15^{th} May, 2018, passed by Ld. Judge, Motor Accident Claims Tribunal, Fast Track Court, Suri at Birbhum, in M.A.C. Case No.80 of 2015, on a claim under

Section 166 of the M.V. Act, 1988, granting an award to the tune of Rs.14,70,000/- to the dependents of the deceased, namely, 'Jhinuk Sarkar', for a vehicular accident occurred on 3rd March, 2015, by reason of involvement of vehicle No.WB-57/7928 in consequence of rash and negligent driving.

Mr. Singh, learned advocate appearing for the appellant/Insurance Company primarily disputes the quantum of compensation assessed by the Ld. Tribunal on two grounds. Insurance Company submits that the Learned Court below has erred in law in considering the income of the 19 years old victim, a student of B. Tech., 2nd Year at Bengal Institute of Technology and Management, at Rs. 10,000/-per month. Secondly, deceased being unmarried, the deduction for personal expenses should have been 50% of victim's income, and not 1/3rd, as decided by the Ld. Tribunal.

Per contra, Ms. Ghosh, the Learned Advocate for the respondents /claimants submits that the award passed by the Learned Tribunal is just and further prays for consideration of future prospect of the deceased.

Ms. Ghosh further submits that though a COT application has not been taken out as yet, but the claimants should have been granted 'future prospect' in view of the decision of Apex Court rendered in the case of ***Surekha and others Vs Santosh and others*** reported in ***2020 (2) TAC 44 SC.***

On the issue of monthly income, it appears that Apex Court in the case of ***Navjot Singh Vs Harpreet Singh and Others,*** in exercise of its authority available to Apex Court held notional income of an Engineering student at Rs.10,000/- per month, without equating a student pursuing Engineering Degree Course with minimum wages admissible to an unskilled worker. In another case of ***G. Ravindranath @ R. Chowdhary –Vs.– E. Srinivas & Anr.*** reported in ***2013 (4) TAC 849 SC*** the income of a 19 years old student of PUC, 2nd year, who used to assist his parents in agricultural works, and also in vending milk to the customers, was held to be Rs.3,500/- per month. Similarly, in the case of ***Arvind Kumar Mishra –Vs- New India Assurance Co. Ltd.*** reported in ***2010 (4) TAC 385 SC*** the income of a final year engineering student of a reputed college, with brilliant academic record, having passed examinations with distinction, was held to be Rs.5,000/- per month.

Upon seeing such referred judgments as discussed hereinabove, this court is of the view that realistic approach has to be applied in the given circumstances of the case for a second year engineering girl student, who left this world being a victim of road accident, without being fully blossomed. For the peculiarity of circumstances involved in this case, for special features of this case, and after applying a reasonable approach, if an amount of Rs.6,000/- per month for a second year B. Tech. Student, who became a victim of road traffic accident in 2015, is assessed as income on a claim under Section 166 of M.V. Act, the same does not appear to be excessive and exorbitant also.

The second year girl student pursuing B. Tech. cannot be equated with an unskilled worker having no stable income for all purposes.

This observation is made upon consideration of the peculiar circumstances involved in this case, and for special features of this case, which neither can be generalized in any other cases, nor can be straightjacketed in any manner whatsoever.

Having considered the submissions, thus advanced by both the parties, and also taking note of the judgments referred hereinabove, and bearing in mind the guidelines prescribed in the cases 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*** along with the precedence of this Court, it appears that there is scope for revisiting the award upon due consideration of the income, erroneously assessed by the Tribunal.

Since 1/3 as personal expenses of the deceased has been deducted, which in view of decision rendered in the case of ***Pranay Sethi & Ors (supra),*** the appellant/insurer is justified in submitting that 50% of the victim's income towards personal expenses of the deceased should have been deducted instead of 1/3, as erroneously made by the Tribunal.

At the same time, this court does not prefer to become hyper-technical in refusing the claim of the claimants so as to make the awarded sum to be just and proper, even in the absence of COT being filed for the purpose.

For assessing the just compensation, future prospect to the tune of 40% on the income of the deceased so assessed, should also be added.

Accordingly, the award passed by the Tribunal is thus modified to the extent mentioned hereinabove and recalculated as hereinunder :

Particulars	**Amounts (Rs.)**
Monthly Income	6,000/-
Add 40% income for future prospect (Rs.2,400/-)	8,400/-
Yearly Income	1,00,800/-

50% deduction for personal expenses	50,400/-
Multiplier (18)	9,07,200/-
Collective General damages	30,000/-

Total	**9,37,200/-**

Mr. Singh submits that a total sum of Rs.18,44,417/- is deposited by insurance company, by way of two separate deposits of Rs.25,000/- and Rs.18,19,417/- respectively, with the Registrar General of this Court.

Accordingly, from the above deposit, a sum of Rs.9,37,200/- along with 6% p.a. interest on the same, to be calculated from the date of filing of claim application till the date of payment, may be disbursed to the claimants in accordance with law and in the manner and proportion as per the award.

Liberty is given to claimants to make proper approach to Registrar General for release of such modified award. Claimants/respondents shall furnish particulars of their Bank details as also proof of identity with the Registrar General of this Court as expeditiously as possible.

Upon deposit of such details, the Registrar General is directed to pay the said sum directly in the bank account of the claimants through RTGS/NEFT. Such payment to claimants must be made within four weeks from the date of receipt of the Bank details from the claimants/respondents.

The Learned Registrar General is further directed to refund the entire balance deposit with interest accrued, to the insurance company within a period of four weeks.

With the aforesaid directions the instant appeal is disposed of.

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

There will 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.

(Subhasis Dasgupta, J)