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F.M.A. 754 of 2013

(Via Video Conference)

Smt. Tanushree Das (Bose) & ors.
Vs.
The National Insurance Co. Ltd. & anr.

Mr. Subir Banerjee ...For the Appellants/claimants

Mr. Afroze Alam ... For the respondent no.1/Insurance Co.

This appeal is directed against the judgement and order dated 26.11.2010 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Jalpaiguri in M.A.C. Case No.54 of 2010 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 38 years old 'Sri Goutam Das' in a road accident on 10.01.2010..

Various points have been raised by the appellants/claimants in the instant appeal. It is submitted on behalf of the claimants that the learned Tribunal wrongly assessed the monthly net income of the deceased as Rs.16,515/-. It is further submitted that while computing the monthly income of the victim, the learned Tribunal did not consider the provident fund amount and the group insurance amount and no additional amount was awarded on account of future prospect. The claimants also submit that they were erroneously given only Rs.9,500/- instead of Rs.70,000/- under the full compensation of general damages. The claimants also submit that they were also not granted medical expenses amounting to Rs.45,000/-. Lastly, the claimants submit that the learned Tribunal erred in not granting interest on the compensation amount. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the tribunal.

Per contra, learned Advocate for the respondent no.1/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 award.

This Court is of the view that while arriving at the net income of the victim, the amount deductible by way of professional tax would be deducted, but other regular allowances and deductions enjoyed by the victim could not be deducted since such allowances and deductions formed a part of the package that was available to the victim and the computation of compensation is based on the net amount available in the hands of the victim at the time of his accident and in view of that, the deduction towards provident fund and group insurance should also not have been made in calculating the income of the deceased.

Considering the judgements of (i) **Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.,** reported in **(2009) 6 SCC 121; (ii) National Insurance Co. Ltd. Vs. Pranay Sethi & ors.,** reported in **(2017) 16 SCC 680; (iii) Sunil Sharma & ors. Vs. Bachitar Singh**

& ors., reported in **(2011) 11 SCC 425** and (iv) **Vimal Kanwar & ors. Vs. Kishore Dan & ors.,** reported in **(2013) 7 SCC 476,** I find substance in the arguments of the claimants. The gross monthly income of the deceased at the time of the accident was Rs.18,685/- per month after deducting the monthly professional tax of Rs.130/-. The appellants are justified in praying for addition of 50% on account of future prospect on the income of the deceased, Rs.45,000/- on accounts of medical expenses and also Rs.70,000/- under collective heads of general damages.

Accordingly, the impugned award is modified as recalculated in the manner referred hereinafter :

Particulars	Amount
Monthly income	Rs.18,685/-
Less : Professional tax	Rs.130/-
	Rs.18,555/-
Annual income X 12	Rs.2,22,660/-
Add : 50% future prospect	Rs.1,11,330/-
	Rs.3,33,990/-
Less : 1/3rd for personal expenses	Rs.1,11,330/-
	Rs,2,22,660/-
Multiplier '15'	Rs.33,39,900/-
Add : General damages	Rs.70,000/-
	Rs.34,09,900/-
Add : Medical expenses	Rs.45,000/-
	Rs.34,54,900/-
Less : Award of learned tribunal	Rs.21,23,421/-
Balance enhanced amount	Rs.13,31,479/-

The claimants acknowledge the receipt of the awarded amount of Rs.21,23,421/- in terms of the direction of the learned tribunal. Accordingly, the balance enhanced sum of Rs.13,31,479/- would become payable to the appellants by the insurance company together with interest assessed at the rate of 6% per annum on and from the date of filing of claim application, that is, 15.02.2010 within a period of 45 days from the date of receipt of the bank account particulars of the appellants. The insurance company is also liable to pay interest at the rate of 6% per annum on the already awarded and paid amount of Rs.21,23,421/- from the date of filing of the claim application till the payment.

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.

It is made clear that payments shall be made by NEFT/RTGS in the proportion as ordered by the learned 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 application, if any, with the main appeal.

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.)