Ct. No. 26

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F.M.A. 402 of 2010

Smt. Nilu Karmakar & Ors.

Vs.

The New India Assurance Co. Ltd. & Ors.

(Via Video Conference)

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

Mr. Parimal Kumar Pahari ...For the Respondent/Insurance Co.

Ms. Ruxmini Basu Roy ...For the Respondent No. 3/Claimant

The appeal is directed against the judgment and order dated July 02, 2008 passed by the learned Judge, Motor Accident Claims Tribunal (District Judge), Jalpaiguri, in M.A.C. Case No. 52 of 2008, on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one Biplab Karmakar, aged about 35 years in a road accident dated February 22, 2007.

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 annual income of the deceased as Rs.15,000/- per annum while the deceased used to earn Rs.7,500/- per month as an agent of M/s. Basil International Ltd. Further, the appellants were not granted any amount under the head 'future prospect'. The claimants also submit that they were erroneously given only Rs.9,500/- instead of Rs.70,000/- under the full component of 'general damages'. Lastly, the claimants submit that the learned Judge 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 learned Tribunal.

Learned Counsel representing the respondent No. 3

/ claimant adopted the submission of the claimants / appellants.

Per contra, the learned Counsel representing the 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 awarded amount.

Considering the decisions of the Hon'ble Apex Court in cases of ***Smt. Sarala Verma & Ors. -Vs.- Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121** and in the case of ***National Insurance Company Limited -Vs.- Pranay Sethi & Ors.,*** reported in **(2017) 16 SCC 680** and also following the precedence of this Court on the point of monthly income, I find substance in the arguments of the claimants. For the year 2007 in a claim under Section 166 of the Motor Vehicles Act, 1988 an amount of Rs.3,000/- per month does not appear to be exorbitant. Appellants are justified in praying for 40% addition on account of 'future prospect' on the income of the deceased.

The appellants however admit that considering the age of the deceased the correct multiplier should be '16' and not '17' as applied by the learned Tribunal.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinbelow :

Monthly Income	**Rs.**	**3,000/-**
Annual Income (3,000 X 12)	**Rs.**	**36,000/-**
Add 40% future prospects	**Rs.**	**14,400/-**
	Rs.	**50,400/-**
1/3rd deduction (personal Expenses)	**Rs.**	**16,800/-**
The figure comes	**Rs.**	**33,600/-**

Use Multiplier (16) (33,600 X 16)	**Rs. 5,37,600/-**
Add: General Damages	**Rs. 70,000/-**
	Rs. 6,07,600/-
Less : Award of Tribunal	**Rs. 1,80,000/-**
Balance enhanced amount	**Rs. 4,27,600/-**

The claimants/appellants No. 1 and 2 and claimant/respondent No. 3 acknowledged the receipt of the awarded amount of Rs.1,80,000/- in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.4,27,600/- would become payable to the claimants by the Insurance Company, together with interest assessed at the rate of 6% per annum on and 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 appellants. The Insurance Company will also pay interest at the rate of 6% per annum on the awarded amount of Rs.1,80,000/- (already paid) till the payment made.

Learned Counsel for the claimants will forward the bank account details of the appellants within a fortnight from date to the learned Counsel for the Insurance Company. The payment shall be made to the claimants' bank accounts directly in equal proportion.

With the aforesaid directions, the instant appeal is disposed of.

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

There will 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.)