

Ct. 24.9
No. 26
2021
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F.M.A. 486 of 2014

(Via Video Conference)

Arjina (Khatun) Bibi

Vs.

The New India Assurance Co. Ltd. & Anr.

Ms. Sima Ghosh

...For the Appellant/Claimant

Mr. Arabinda Kundu

...For the Respondent/Insurance Co.

This appeal is directed against the judgment and award dated March 19, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Suri, (District Judge) Bidbhum, in M.A.C. Case No. 148 of 2008 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one Yusuf @ Yusub Sk, who was a mason earning Rs.4,000/- per month, in a road accident dated February 29, 2008.

Various points have been raised by the appellant/claimant in the instant appeal challenging the quantum of compensation. It is submitted on behalf of the appellant that the learned Tribunal committed error in law while assessing annual income of the victim as Rs.2,000/- per month instead of Rs.3,000/- per month. It further submitted on behalf of the appellant that the claimant was not granted any amount under 'future prospect' and also not assessing the general damages while passing the impugned award.

In reply, Mr. Arabinda Kundu, learned Counsel appearing for the respondent/Insurance Company submits that the award passed by the learned Tribunal is absolutely just and there is no scope for interference and/or modification of the award. Mr. Kundu further submits that since the claimant failed to establish the income of the

deceased, the learned Tribunal rightly assessed income of the deceased Rs.2,000/- per month.

Considering the judgments delivered by the Hon’ble Apex Court in the cases of *Smt. Sarala 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 and also following the precedence of this Court on the point of monthly income, I find substance in the arguments of the appellant. Under Section 166 of the Motor Vehicles Act, 1988, an amount of Rs.3,000/- per month does not appear to be exorbitant. Appellant is justified in praying for 40% additional amount towards ‘future prospect’ instead of 50% since the deceased was 30 years old working an unorganised sector. Appellant also raised question about non-pecuniary damages / general damages which should be Rs.70,000/-.

Accordingly, 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. 3,000/-
Add : Future Prospect 40%	<u>Rs. 1,200/-</u>
Total monthly income	Rs. 4,200/-
Annual Income (4,200 X 12)	Rs. 50,400/-
After 1/3 rd deduction for personal Expenses	Rs. 33,600/-
Multiplier (17) (33,600 X 17)	Rs. 5,71,200/-
Collective General damages	<u>Rs. 70,000/-</u>
Total Compensation	Rs. 6,41,200/-

The claimant acknowledges receipt of the awarded amount of Rs.2,81,500/- including interest in terms of direction of the Tribunal.

Accordingly, the balance enhanced sum of Rs.3,59,700/- would become payable to the appellant/claimant by the Insurance Company, together with interest assessed at the rate of 6 per cent per annum on and from the date of filing of the claim petition till the date of its final payment within a period of 45 days from the date of receipt of the bank account particulars of the appellant.

Learned Counsel for the appellant will forward bank account details of the appellant within a fortnight from date to the learned Counsel for the Insurance Company. The payment shall be made to the claimant's bank account directly, in the same manner as decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

There shall be no further order as to costs.

In view of disposal of this appeal, connected applications, if any, are 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.)