Ct. No. 26

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F.M.A. 1523 of 2008
With
IA No. CAN 2 of 2013 (Old No. CAN 8467 of 2013)
With
IA No. CAN 3 of 2017 (Old No. CAN 8495 of 2017)
Mun Mun Mallick & Ors.
Vs.
National Insurance Co. Ltd. & Anr.
(Via Video Conference)

Mr. Krishanu Banik ...For the Appellants /Claimants

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

By consent of the parties, the application for taking note of the death of appellants/claimants No. 4 and 5 and also for recording the attainment of majority of the appellant/claimant No. 2 the application is taken up for hearing.

On the oral prayer of the learned Counsel appearing on behalf of the applicants/claimants, the application is allowed subject to the prayer made in the said application. No serious objection has been raised by Mr. Parimal Kumar Pahari, learned Counsel appearing on behalf of the Insurance Company/respondent.

The application is disposed of.

The concerned department is directed to amend the cause title of the memorandum of appeal and tag the application with the main appeal.

The appeal is directed against the judgment and award dated June 13, 2007 passed by the learned Member, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Nadia (hereinafter referred to as the learned Tribunal Judge), in M.A.C. Case No. 436 of 2001 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one Bhulu Mallick in a road accident occurred on

December 13, 2001.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988. The learned Counsel for the appellants/claimants submit that the learned Tribunal committed an error in law while assessing the monthly income of the deceased as Rs.1,750/- instead and in place of Rs. 98,700/- per annum which was established by the claimants by producing oral evidence as well as documentary evidence. The Income Tax Return for the Assessment Year 2000-2001, which was marked as Exbt. 5, was filed and duly proved before the learned Tribunal. The learned Counsel for the appellants/claimants further submit that the learned Tribunal committed error in law while not granting 40% additional income towards 'future prospect' since the deceased was 35 years old and self-employed.

In reply, Mr. Parimal Kumar Pahari, learned Counsel appearing on behalf of the 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 the award under the present appeal.

In view of the law as it stands now, after the decisions pronounced by 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**, the submissions and the points made by Mr. Banik are accepted. The claimants are entitled to 40% additional income as 'future prospect' of the deceased. Therefore, the impugned award is thus modified as stated hereinafter :

Annual Income	**Rs. 98,700/-**
40% future prospects	**Rs. 39,480/-**
Annual loss of income	**Rs. 1,38,180/-**
1/4th deduction for personal Expenses	**Rs. 34,545/-**
After deduction the figure comes	**Rs. 1,03,635/-**
Use Multiplier (16) (1,03,635 X 16)	**Rs.16.58,160/-**
Add: General Damages	**Rs. 70,000/-**
Principal Compensation	**Rs.17,28,160/-**

Mr. Banik acknowledges that his clients have already received a sum of Rs. 2,42,500/- together with interest and therefore the differential amount of Rs.14,58,600/- together with 6% interest from the date of filing the claim petition till the payment, shall be paid to the three surviving claimants by the respondent Insurance Company in the same manner and proportion as decided by the Court below within 45 days from the date of receipt of the particulars of their bank account details to be supplied by their learned Counsel to the learned Counsel for the Insurance Company.

It is made clear that the payment shall be made directly through NEFT/RTGS to the bank accounts of the claimants/appellants.

With the aforesaid directions, the instant appeal being F.M.A. 1523 of 2008 stand 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.

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.)