Ct. No. 26

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F.M.A. 337 of 2014

(Via Video Conference)

Popy Joardar & Ors.

Vs.

National Insurance Co. Ltd. & Anr.

Ms. Sima Ghosh ...**For the Appellants/Claimants**

Mr. Arabinda Kundu ...**For the Respondent/Insurance Co.**

This appeal is directed against the judgment and award dated April 25, 2012 passed by the learned Additional Judge, Motor Accident Claims Tribunal, 3rd Court, Berhampore, Murshidabad, in M.A.C. Case No. 59 of 2010 in a claim under Section 163A of the Motor Vehicles Act, 1988 for the death of one Uttam Joardar @ Uttam Kumar Joardar , 28 years old, in a road accident dated November 14, 2009.

Various points have been raised by the appellants/claimants in the instant appeal challenging the quantum of compensation. It is submitted on behalf of the appellants that the learned Tribunal committed error in law while assessing compensation, it should not have reduced the amount to Rs.4,40,000/-. Relying on a decision of this Hon'ble Court in the case of ***National Insurance Company Ltd. Vs. Swapan Kumar Dakua & Anr.,*** reported in **WBLR 2000 Cal. 289,** learned Counsel for the appellants further submits the interest part has not been considered as per the Motor Vehicles Act, 1988.

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 the present case has been filed only in respect of the insurer of one vehicle so the National Insurance Company is liable to pay ½ of the said amount and the learned Tribunal rightly assessed the same.

However, following the precedence of this Court on point of liability and also considering the decision in the case of ***National Insurance Company Ltd. Vs. Swapan Kumar Dakua & Anr.(Supra)*** this Court considers that there is cogent reason in the argument of the appellants/claimants that the entire liability will shift on the Insurance Company made party in this proceeding. So National Insurance Company would be obliged to compensate the victim in full.

Accordingly, the impugned award passed by the Tribunal is modified and recalculated as follows :

Monthly income	**Rs. 3,000/-**
Annual Income (4,200 X 12)	**Rs. 36,000/-**
After 1/3rd deduction for personal Expenses	**Rs. 24,000/-**
Multiplier (18) (24,000 X 18)	**Rs. 4,32,000/-**
Collective General damages	**Rs. 9,500/-**
Total Compensation	**Rs. 4,41,500/-**

The claimants acknowledge receipt of the awarded amount of Rs.2,20,000/- without interest.

Accordingly, the Insurance Company is directed to calculate the interest @ 6% per annum on the awarded amount till the actual disbursement in favour of the claimants and also the balance enhanced sum of Rs.2,21,500/- would become payable to the appellants/claimants 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 appellants/claimants.

Learned Counsel for the appellants/claimants will forward bank account details of the claimants within a fortnight from date to the learned Counsel for the Insurance Company. The payment shall be made to the claimants' bank account directly, in the same manner and proportion 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.)