04.10.2021
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F.M.A. 1250 of 2007

(Via Video Conference)

Smt. Kalyani Ghosh & anr.
Vs.
The Oriental Insurance Co. Ltd. & anr.

Mr. Krishanu Banik
Mr. Biswarup Biswas ...For the Appellants/claimants

Mrs. Sucharita Paul ... For the respondent no.1/Insurance Co.

This appeal has been filed by the claimants against an award dated 12th June, 2006 passed by the learned Member, Motor Accident Claims Tribunal, Additional District Judge, 1st Court, Krishnanagar, Nadia in M.A.C. Case No.10 of 2005 in a claim under Section 163A of the Motor Vehicles Act, 1988.

The appellants submit that the victim was earning Rs.3,000/- per month from his cloth business. However, the learned Court below erroneously took the income of the victim as Rs.60/- per day. It is further submitted that the multiplier in the instant case should be 18 instead of 15, as adopted by the Court below. There were two vehicles involved in the accident. The claimants argue that the learned Tribunal erroneously apportioned the liability of the respondent/insurance company at 60% and deducted 40% of the total compensation amount on the ground that the owner/insurer of the other vehicle involved, was not made a party. The claim case having been filed under Section 163A of the Motor Vehicles Act, 1988, it is not necessary for the claimants to prove the wrongful act or negligence on the part of any of the offending vehicles involved in the accident.

The insurance company is represented and strongly opposes the case made out by the claimants.

Considering the submissions as advanced by the learned Advocates for the parties and after perusing the record, in my view, the liability to pay compensation under Section 163A is on the principle of no fault and therefore, the question as to who is at fault or rash and negligent, is immaterial. The apportionment of liability is not required to be done under Section 163A of the said Act. This Court therefore holds that the claimants are entitled to the remaining 40% compensation which was deducted by the tribunal.

The submission made by the appellants on the point of income and multiplier is also accepted. Accordingly, the income of the victim is taken to be Rs.3,000/- per month as per usual practice of this Court for accident till the year 2010. The correct multiplier of 18 is adopted for reassessment.

The award is therefore modified and recalculated as follows :-

Particulars	Amount
Yearly income (Rs.3,000/- p.m. X 12)	Rs.36,000/-
Less : 1/3rd personal expenses (-)	Rs.12,000/-
	Rs.24,000/-
Multiplier '18' (Rs.24,000/- X 18)	Rs.4,32,000/-
Add : Collective heads of General damages	Rs.4,500/-
	Rs.4,36,500/-
Less : Award amount (-)	Rs.1,32,300/-
Differential amount	Rs.3,04,200/-

The claimants acknowledge the receipt of the awarded amount of Rs.1,32,300/- along with interest in terms of the direction of the learned tribunal. Accordingly, the balance enhanced sum of Rs.3,04,200/- 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 within a period of 45 days from the date of receipt of the bank account particulars of the claimants. 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. The payment shall be made in the proportion decided by the Court below.

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.)