

S/L 15
05.10.2021
Court No.26
SD

FMA 228 of 2021
With
CAN 3 of 2021
(Via Video Conference)

Lutfu Bibi & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

Ms. Susmita Saha Dutta
Mr. Niladri Saha

...for the Appellants/Claimants.

Ms. Sucharita Paul

...for the Respondent/Insurance Co.

CAN 3 of 2021:-

This is an application for substituting the name of appellant no. 5, Nuri Bibi, since deceased, with the names of her legal heirs in the instant appeal.

On perusal of the pleadings and the documents annexed, this Court is satisfied and allows such prayer.

Accordingly, the application for substitution, being CAN 3 of 2021 stands allowed and the name of the appellant no. 5 is substituted with the names of her five legal heirs, as recorded in the application for substitution. The department is directed to take steps for such purpose.

FMA 228 of 2021:-

The appeal is directed against the judgment and award dated September 4, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Raiganj, Uttar Dinajpur, in M.A.C Case No. 38 of 2018, on a claim under section 166 of the Motor Vehicles act, 1988.

The victim was a 42 years old khalasi. The appellants state that since the accident took place in the year 2018, the income of the deceased should have been taken to be at least Rs. 5,000/- per month, instead of Rs. 3,000/- as held by the tribunal. It is further submitted that the claimants are entitled to 25% future prospects on the income of the

deceased. However, learned Tribunal erred in not allowing the same.

Mrs. Paul, counsel appearing on behalf of the insurance company argues that the learned Tribunal was correct in accepting the income of the victim to be Rs. 3,000/- in absence of any documentary evidence. However, she also points out that it is the case of the claimants themselves that the victim used to earn Rs. 4,000/- per month. It is further pointed out that the oral evidence adduced by PW1, being the widow and also PW3, being the employer of the deceased, reflect that the income of the victim was Rs. 4,000/- per month. Accordingly, in view of the admission of the claimants, the income of the victim cannot be taken to be Rs. 5000/- per month. The Insurance Company further argues that the amount awarded under the collective heads of general damages should have been restricted to Rs. 70,000/- in view of the judgment delivered by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.**, reported in **(2017) 16 SCC 680**.

This Court is inclined to accept the submissions made on behalf of the insurance company. However, for the year 2018, an amount of Rs. 4000/- per month does not appear to be exorbitant at all as an unskilled worker working on all days could have earned Rs. 4000/- per month.

After considering the submissions as advanced by the learned advocates for the parties, the impugned award is modified and reassessed as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	4,000.00
Add future prospect 25%	(+) 1,000.00
	5,000.00
	<u> x 12 </u>
	60,00.00
Less personal expenses 1/4 th	(-) 15,000.00
	45,000.00
Multiplier 14 (Rs.45000/- x 14)	6,30,000.00
Add General damages	(+) 70,000.00
	7,00,000.00
Less: awarded amount	(-) 4,78,000.00
Differential amount	2,22,000.00

The claimants acknowledge receipt of the entire awarded amount of Rs. 4,78,000/- along with interest. The balance sum of Rs. 2,22,000/- would be paid to the appellants 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 within a period of 45 days from the date of receipt of the bank account particulars of the appellants. For such purpose, advocate for the appellants will forward the bank account details of the appellants within a fortnight from date to advocate for the insurance company. The payment shall be made in the proportion decided by the Court below. The proportion of appellant no. 5, since deceased, be equally divided between her five legal heirs.

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 applications, if any, are also disposed of.

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.)