

27.08.2021

SS

F.M.A. 261 of 2014

(Via Video Conference)

Smt. Supriti Chatterjee & ors.

Vs.

H.D.F.C. ERGO GIC Ltd. & anr.

Mr. Jayanta Kumar Mandal

...For the Appellants/claimants

Mr. Rajesh Singh

... For the respondent No.1/Insurance Co.

The appeal is directed against the judgment and order dated 27th day of June, 2012 passed by the Learned Special Judge cum Additional District Judge, Motor Accident Claims Tribunal, Durgapur in M.A.C. case no. 62 of 2011/50 of 2009 on a claim under section 166 of the Motor Vehicles Act, 1988 for the death of one 40 years old 'Barun Kumar Chatterjee' in a road accident dated January 25, 2009. The deceased was a permanent employee of 'Durgapur Steel Plant'.

Various points have been raised by the claimants in the instant appeal challenging the quantum of compensation. It is submitted on behalf of the appellants that they were not granted any amount under 'future prospect'. Claimants submit that they were not given Rs.70,000/- under the full component of 'general damages'. Claimants also point out that the learned Judge erred in not granting 'just compensation' and wrongfully restricted the compensation to Rs.22,00,000/- which was mentioned as 'claim amount' by the claimants,

in the claim application. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the Tribunal.

Per contra, the learned Advocate representing the Insurance Company argues that in the facts and circumstances of the case, the award is just and reasonable and there is no further scope of enhancement of the same. Mr. Singh submits that the claimants have received the amount as prayed for in the claim application and therefore no further enrichment is required to be done to the said claimants.

Considering the judgements of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, reported in **(2009) 6 SCC 121**; **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.**, reported in **(2017) 16 SCC 680** and also **Rajesh & Ors. Vs. Rajbir Singh & Anr.** reported in **(2013) 9 SCC 54**, I find substance in the arguments of the appellants. Considering the age of 40 years of the victim, the 30% addition of income on account of 'future prospect' of the deceased is justified. Claimants are also entitled to Rs.70,000/- under collective heads of general damages. It is now well settled that there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claim amount. A court can allow compensation more than the claim made/shown by the claimants, if the assessment is just and proper.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	Amount
Monthly Salary	Rs.25,212/-
Annual Salary	Rs.3,02,544/-
Add 30% future prospect (Rs.90,763/-)	Rs.3,93,307/-
Less 1/3 rd for personal expenses (Rs.1,31,102/-)	Rs.2,62,205/-
Multiplier '15'	Rs.39,33,075/-
Add 'General Damages'	Rs.70,000/-
TOTAL Principal Compensation	Rs.40,03,075/-
LESS – awarded by Tribunal and paid by insurer	<u>Rs.22,00,000/-</u>
BALANCE (enhancement)	<u>Rs.18,03,075/-</u>

The claimants acknowledge receipt of the awarded amount of Rs.22,00,000/- along with interest in terms of the direction of the tribunal. Accordingly, the balance enhanced sum of Rs.18,03,075/- would become payable 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. 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 to the claimants' bank accounts directly, in the proportion decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of the 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.

There will be no order as to costs.

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.)