28.09.2021
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F.M.A. 2065 of 2018
(Via Video Conference)

Ruma Daw & anr.
Vs.
Oriental Insurance Co. Ltd. & anr.

Mr. Saidur Rahaman
...For the Appellants/claimants

Mr. Parimal Kr. Pahari
... For the respondent No.1/Insurance Co.

This appeal is directed against the order and award dated 20.04.2017 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District and Sessions Judge, 7th Court, Barasat, North 24-Parganas in M.A.C. Case No.45 of 2011 (ADJ)/M.A.C. Case No.18 of 2011 (D.J.) in a claim under Section 16 of the Motor Vehicles Act, 1988 for the death of one Sasanka Sekhar Daw in a road accident on 28.08.2010.

Various points have been raised by the claimants/ appellants in the instant appeal challenging the quantum of compensation. It is submitted on behalf of the appellants that the learned Tribunal erred in assuming income of the deceased who was an income tax payee. It is further submitted that the learned Judge erred in taking the annual income on the basis of three years average income as per the income tax return which is not permissible under the law. It is also submitted that the claimants were not granted any amount towards 'future prospects' and that the claimants were erroneuously granted only Rs.9,500/- instead of Rs.70,000/- under the full component of general damages. Accordingly, it is argued that a lesser amount of compensation has been wrongly awarded by the learned Tribunal.

Mr. Rahaman, learned Advocate for the appellants/claimants has referred the decision in the case of **Shashikala and ors. Vs. Gangalakshmamma and anr.,** reported in **2015 ACJ** at **page 1239 (S.C.)** and submitted that as per the said decision of the Hon'ble Supreme Court the income as shown in the last income tax return is to be accepted as income of the deceased. Therefore, income of the deceased for the Assessment Year 2009-2010 as shown Rs.4,80,000/- after deduction of tax as found by the learned Tribunal is to be taken for assessment of the compensation.

Per contra, learned Counsel for the respondent no.1/insurance company submits that in the facts and circumstances of the case, the award passed by the learned Tribunal is just and reasonable and there is no further scope of enhancement of the same. He further submits that the learned Tribunal has erred in adopting multiplier of '15' instead of '14' considering the age of the victim as 42 years.

Considering the judgements of **Shashikala & ors. (**supra); **Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.,** reported in **(2009) 6 SCC 121** and **National Insurance Company Ltd. Vs. Pranay Sethi &**

ors. reported in **(2017) 16 SCC 680**, I find substance in the arguments of the appellants/claimants. The appellants/claimants are justified in praying for taking the income of Rs.4.80 lacs as shown in the last years income tax return and 25% additional on account of future prospect.

The claimants/appellants should also get Rs.70,000/- under collective heads of general damages.

Accordingly, the impugned award passed by the tribunal is modified and recalculated in the manner referred hereinafter :

Particulars	Amount
Annual income (after deducting tax)	Rs.4,80,000/-
Add : 25% future prospect	Rs.1,20,000/-
	Rs.6,00,000/-
Less : 1/3rd for personal expenses	Rs.2,00,000/-
	Rs.4,00,000/-
Multiplier '14'	Rs.56,00,000/-
Add : General damages	Rs.70,000/-
	Rs.56,70,000/-
Less:Awarded amount already Paid by insurer	Rs.42,09,500/-
Balance enhancement amount	Rs.14,60,500/-

The claimants/appellants acknowledge receipt of the awarded amount of Rs.42,09,500/- in terms of directions of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.14,60,500/- would become payable to the appellants/claimants by the insurance company together with interest @ 6% p.a. on and from the date of filing of the claim petition till actual payment within a period of 45 days from the date of receipt of the bank account particulars of the claimants. Counsel for the appellants/claimants will forward the bank account details of the claimants within fortnight from date to the Counsel for the insurance company.

It is made clear that the payment shall be made by NEFT/RTGS in the same manner and proportion as per award.

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.

L.C.R., if any, be returned back to the court below forthwith.

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.)