27.08.2021
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F.M.A. 1412 of 2014

(Via Video Conference)

Smt. Kalpana Kahar & ors.
Vs.
National Insurance Co. Ltd. & anr.

Mr. Jayanta Kumar Mandal
...For the Appellants/claimants

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

The appeal is directed against the judgment and order dated April 25, 2013 passed by the Learned Judge, Motor Accident Claims Tribunal cum 3rd Additional District Judge at Alipore in M.A.C. case no. 93 of 2011 on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 34 years old 'Kamal Kahar alias Prasad' in a road accident dated September 9, 2011.

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/claimants that they were not granted any amount under 'future prospect' as per present position of law. Claimants took the plea that the income of the victim was Rs.6,000/- per month at the time of accidental death of the victim as during his lifetime he was earning the same as a taxi-driver and the learned Tribunal arbitrarily took the income to be Rs.3,000/- per month without considering the fact that the victim was a skilled driver. The learned Tribunal below also wrongly deducted 1/3rd instead of 1/4th towards personal expenses of the victim as the number of claimants are four. Lastly, the claimants submit that they were given only Rs.9,500/- instead of Rs.70,000/- under the full component of 'general damages'. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the learned 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.

Considering the judgements of ***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. The appellants are justified in praying for addition on account of 'future prospect' to the income of the deceased. Since the age of the victim was below 34 years, future prospect will be 40% as rightly pointed out by Mr. Mandal, Counsel for the claimants. The deduction towards personal expenses of the vicrtim wil be 1/4th instead of 1/3rd since number of the claimants/dependents are four. Since it is the practice of this Court to take Rs.3,000/- as the base income if there is no cogent evidence as to the income, particularly from the year 2004 onwards upto the year 2011 as it was possible for an unskilled worker in 2011 to earn Rs.3,000/- per month if working all days of the month. So this Court is also assessing the notional income of the victim as Rs.3,000/- per month and the claimants are also entitled to Rs.70,000/- under collective heads of general damages.

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

Particulars	**Amount**
Monthly Salary	Rs.3,000/-
Annual Salary	Rs.36,000/-
Add 40% future prospect	Rs.14,400/-
	Rs.50,400/-
Less 1/4th for personal expenses	Rs.12,600/-
	Rs.37,800/-
Multiplier '16'	Rs.6,04,800/-
Add 'General Damages'	Rs.70,000/-
TOTAL Principal Compensation	Rs.6,74,800/-
LESS – awarded by Tribunal and paid by insurer	Rs.3,93,500/-
BALANCE (enhancement)	Rs.2,81,300/-

The claimants acknowledge receipt of the awarded amount of Rs.3,93,500/- along with interest in terms of the direction of the tribunal. Accordingly, the balance enhanced sum of Rs.2,81,300/- 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.)