S/L 7
13.9.2021
Court No.26
SD

FMA 202 of 2021
With
CAN 1 of 2021
(Application is not in the file)
(Via Video Conference)

Mondira Ghosh & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
... for the Appellants/Claimants.
Mr. Sanjay Paul
... for the Respondent/Insurance Co.

CAN 1 of 2021:-

This is an application for condonation of delay in filing the instant appeal.

In view of Stamp Reporter's Report, there is no delay in filing of the appeal. Accordingly, CAN 1 of 2021 is not pressed and is disposed of.

FMA 202 of 2021:-

This appeal is directed against the judgment and award dated August 26, 2020 passed by the learned Additional District Judge, 2nd Court, Motor Accident Claims Tribunal, Nadia at Krishnagar in M.A.C. Case No.69 of 2014 on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 35 years old Manotosh Ghosh, in a road accident dated January 15, 2014.

Various points have been raised by the appellants/claimants in the instant appeal challenging the quantum of compensation.

Mr. Amit Ranjan Roy, counsel appearing on behalf of the appellants submitted that the monthly income of

Rs.3500/- of the victim considered by the learned Judge was inadequate. Furthermore, claimants were not granted any amount under the heading of 'future prospect'. Lastly, appellants took the plea that in view of 5 numbers of dependents, the deduction for personal expenses should have been 1/4th of the income of the deceased and not 1/3rd as done by the Tribunal. Accordingly, it was argued that a lesser amount of compensation has been wrongfully awarded by the Tribunal.

Mr. Sanjay Paul, counsel appearing on behalf of the insurance company submitted that the Tribunal rightly assessed the income of the deceased Rs.3500/- per month notionally in absence of any documentary evidence. Mr. Paul further submits that the Tribunal committed error in law while granted Rs.1,10,000/- instead of Rs.70,000/- towards loss of love, care, guidance and protection and funeral expenses. Mr. Paul further submits that the Tribunal committed error in law while applying the multiplier 17 instead of 16 since the deceased was 35 years old.

Considering the judgments passed in ***Smt. Sarala Verma & Ors. vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680*** and also following the practice of this Court on the point of monthly income, I find substance in the submissions of the appellants. For the year 2014, in a claim under Section 166 of the Motor Vehicles Act, 1988, an amount of Rs.4000/- per month does not appear to be exorbitant. The appellants are justified in praying for 40% addition on account of 'future prospect' towards income of the deceased and deduction on account of personal expenses should be 1/4th of the income of the deceased. Mr. Paul rightly submitted that the appellants are entitled Rs.70,000/- only under the collective heads of 'general damages' and also the correct multiplier should be 16.

Accordingly, the impugned award is required to be modified and recalculated in the following manner:-

Particulars	Amount (Rs.)
Annual Income (Rs.4000/- x 12)	48,000.00
Deduction 1/4th	(-) 12,000.00
	36,000.00
Future prospect 40%	(+) 14,400.00
Total annual income	50,400.00
Multiplier 16 (50,400/- x 16)	8,06,400.00
Add General damages	(+) 70,000.00
Total compensation	8,76,400.00
Tribunal award	(-) 5,86,000.00
Balance	2,90,400.00

The appellants/claimants acknowledge receipt of the awarded amount of Rs.5,86,000/- along with interest. The balance sum of Rs.2,90,400/- would become payable to the appellants/claimants by the insurance company together with interest at the rate of 6 per centum on an from the date of filing of the claim application till the date of payment.

The respondent/insurance company is hereby directed to pay the sum of Rs.2,90,400/- along with 6% interest per annum on the from the date of filing of the claim application till payment within a period of 45 days from the date of receipt of bank particular of the appellants/claimants.

It is made clear that all payments shall be made via NEFT/RTGS to the bank account of the appellants/claimants and for such purpose the counsel for the appellants/claimants shall furnish the bank account particulars of the appellants/claimants to the counsel for the insurance company within two weeks in the proportion as ordered by the 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 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.)