22.12.2021
Item No.8
Ct. No.7
CHC
(disposed of)

F.M.A.139of 2021
(Physical Hearing)

Kisku Maino Murmu
Vs.
United India Insurance Company Limited & anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy
...for the appellants/claimants

Mr. Parimal Kumar Pahari
...for the respondent no.1/ Insurance Company

The matter is listed today under the heading "To Be Mentioned".

Learned advocate for both the parties are ad idem on the issue that the instant appeal may be disposed of giving a go-by to the technicalities involved in the process and the appeal may be instantly disposed of even without consulting Lower Court Records.

It is submitted by the learned advocate for the appellant since the appellant has been suffering from financial distress for want of sufficiency of money for her sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this case, which is not even opposed by the learned advocate representing the Insurance Company/respondent no.1.

When learned advocate for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The instant appeal has been preferred by the claimant/appellant impugning the judgement and award dated 7th December, 2019, passed by the learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur, in the M.A.C.C.126 of 2018 on a claim under Section 166 of the M.V. Act, 1988, for the death of one "Lakhi Ram Kisku", Carpenter by profession, aged about 26 years old in a road traffic accident, occurred on 14th May, 2018.

Mr. Subir Banerjee, learned advocate appearing for the appellant submits that the Tribunal has erred in law in assessing the income of the deceased carpenter at Rs.3000/-, what should have been considered at Rs.6,000/- per month.

While stressing upon the income of the deceased, Mr. Banerjee argues that in the year 2018, a carpenter may be expected to be having an earning of Rs.6,000/- per month, and which has been established in the oral evidence already adduced before the Tribunal.

Admittedly, no documentary evidence has been adduced in this case.

The quantification of the award is thus most improper and as such it can hardly be regarded to be just and proper, Mr. Banerjee contends.

The other ground emphasized during hearing of this appeal, is that no future prospect has been granted in this case for due quantification of the award.

Mr. Banerjee, thus submits that since the victim suffered accident, when he was 26 years old, the court below ought to have granted 40% as future prospect additionally to the income of the deceased.

Per contra, Mr. Pahari, learned advocate representing the Insurance Company submits that Tribunal has considered every pros and cons of this case and decided the award most reasonably, and as such there is no scope for making any interference, at least doing any modification of the award for the purpose.

Incidentally, Mr. Pahari argues that learned Tribunal has erroneously awarded Rs.1,00,000/- under the collective heads of general damages, which should have been restricted to Rs.30,000/-, as the victim died bachelor.

Facts leading to the death of the deceased are not disputed.

Primarily, two points are urged relatable to the assessment of the income and the future prospect not being granted in this case.

Admittedly, the victim died bachelor, when he was 26 years old. He was a carpenter by profession having substantial income in 2018. In the fitness of the things and for all practical purposes, it would be most reasonable if the income of the deceased is assessed at Rs.5,000/-. In that view of the matter, the income should be fixed at Rs.5,000/-.

As regards future prospect, upon perusal of the judgment and upon consideration of the age of the deceased together with the income of the deceased, as referred hereinabove, future prospect to the tune of 40% should be considered in addition to the income of the deceased.

Having considered the submission of both sides as well as propositions of the law laid down by the Apex Court in the case 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,** and also following the precedents of this Court, this Court finds substance in the argument advanced by the learned advocate for the appellant.

As Mr. Pahari in all his fairness has brought to the notice of the Court that learned Tribunal has erroneously awarded Rs.1,00,000/- under the collective heads of general damages, instead of Rs.30,000/-, the Court shares the same view that the general damages granted should be restricted to Rs.30,000/-, as the deceased victim died bachelor. Since it is a question of law, this Court does not prefer to become hypertechnical in doing necessary modification of the award, so as to make it a just and proper.

Accordingly, the above order passed by the learned Tribunal is thus modified to the extent mentioned hereinbelow and recalculated as follows:

Particulars	**Amount (Rs.)**
Monthly Income	Rs.5,000/-
Annual income	X 12
	Rs.60,000/-
Add: Future Prospect @ 40%	Rs.24,000/-
	Rs.84000/-
Less:1/2 deduction personal expenses (Rs.42,000/-)	Rs.42,000/-
Multiplier 17	X 17
	Rs.7,14,000/-
Add: General Damages	Rs.30,000/-
Total Principal Compensation	Rs.7,44,000/-
Less: Award of Learned Tribunal	Rs.4,06,000/-
Balance enhanced amount	**Rs.3,38,000/-**

The claimant acknowledges the receipt of the awarded amount of Rs.4,06,000/- in terms of the direction of the Learned Tribunal. Accordingly, the balance enhanced sum of Rs.3,38,000/- would become payable to the appellant by the Insurance Company together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition within a period of 30 days from the date of receipt of the bank account particulars of the appellant. Learned advocate for the appellant will forward the bank account details of the appellant within a fortnight from date to learned advocate of the Insurance Company. The payment shall be made to the Bank Account of the appellant directly by NEFT/RTGS.

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.

(Subhasis Dasgupta, J.)