

S/L 15
04.8.2021
Court No.26
SD

FMA 449 of 2016
(Via Video Conference)

Debasri Banik
Vs.
Cholamandalam General Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik

...for the Appellants/Claimants.

Mr. Debanjan Mukherjee

...for the Respondent/Insurance Co.

The appeal is directed against the judgment and award dated July 27, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan in M.A.C. Case No.52/263 of 2011/2011 in a claim case under Section 163A of the Motor Vehicles Act, 1988. The instant appeal was filed on various grounds.

Counsel appearing on behalf of the appellant/claimant submits that the Tribunal was wrong in awarding the compensation of Rs.12,400/- in favour of the claimant in proceeding under Section 163A of the Motor Vehicles Act which is a special provision of the Motor Vehicles Act, 1988 (as amended upto date) as to payment of compensation towards the victim on the basis of Second Schedule of the said Act.

He further submits that the Tribunal was wrong in not assessing the loss of income and not applying 1/3rd deduction on account of own personal living expenses and not using any multiplier and not granting the general damages of Rs.4,500/- (funeral expenses and loss of estate).

Mr. Debanjan Mukherjee, counsel appearing on behalf of the respondent/Insurance Company has vehemently opposed the submission and contention of the counsel for the appellant. He submits that the Tribunal has rightly

passed the impugned award since the same is quite justified and reasonable.

After considering the submissions and rival contention of the parties, this Court is of the view that the submissions of counsel for the appellant is accepted. The impugned award is thus modified as stated hereinafter:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	3,000.00
Annual Income (Rs.3000/- x 12)	36,000.00
After 1/3 rd deduction (personal living expenses)	<u>12,000.00</u>
After deduction Rs.12,000/-	24,000.00
Multiplier 16 (24,000/- x 16)	3,84,000.00
General damages	<u>4,500.00</u>
Total	<u>3,88,500.00</u>

Mr. Banik acknowledges that his clients have already received a sum of Rs.12,400/- together with interest and therefore, the differential amount comes to Rs.3,76,100/- together with 5% interest from date of claim application till payment in the same manner as indicated in the award within 45 days from the receipt of the particulars of their bank accounts to be supplied by their counsel to the counsel for the insurance company.

It is made clear that the payments shall be made by NEFT/RTGS 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.)