

27.09.2021

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F.M.A. 161 of 2021
(Via Video Conference)

Mobina Bibi & anr.
Vs.
The Oriental Insurance Co. Ltd. & anr.

Mr. Muktakesh Das
...For the Appellants/claimants
Mrs. Sayanti Santra
... For the respondent No.1/Insurance Co.

The instant appeal is directed against the judgment and award dated December 11, 2019 passed by the learned Member, Motor Accident Claims Tribunal cum District Jdtge, Nadia in MAC Case No. 161 of 2016 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the accidental death of Khos Mohamod Sekh on 17.02.2016.

The facts of the case are not in dispute.

The claim was filed under Section 166 of the Motor Vehicles Act, 1988. The learned Advocate for the appellant/claimants submit that the learned Tribunal committed error in law while not assessing the monthly income of the deceased as Rs.4,500/- instead of Rs.3,000/-.

Fact of the case is that one Khos Mohamod Sekh died in motor vehicle accident at the age of 23 years and used to earn Rs.4,500/- per month as self-employed khalashi of lorry. The legal heirs being the appellants herein are claiming for compensation on that account.

Mr. Das, learned Counsel appearing on behalf of the appellants/claimants submits that the learned Tribunal had committed error in law while adopting multiplier 17 instead of 18 as per judgement of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.**, reported in **(2009) 6 SCC 121**.

Mr. Das submits that the learned Tribunal had committed error in law while not granting 40% additional income towards future prospect since the deceased was 23 years old self-employed person.

Mr. Das also submits that the learned Tribunal has also committed error in law while not granting Rs.25,000/- for funeral expenses and Rs.15,000/- for loss of estate towards general damages.

Mrs. Sayanti Santra, learned Counsel appearing on behalf of the respondent no.1/insurance company submits that the learned Tribunal is just while not assessing monthly income of the deceased as Rs.4,500/- as the claimants failed to produce any cogent evidence and/or any income proof before the learned Tribunal to establish monthly income of the deceased.

Be that as it may, considering the rival submissions of the parties as well as observations of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) as well as in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & ors.** reported in

(2017) 16 SCC 680 as well as general practice of our High Court, the award passed by the learned tribunal is modified and recalculated as follows :-

<u>Particulars</u>	<u>Amount</u>
Monthly income	Rs.4,500/-
Annual income X12	Rs.54,000/-
Add : Future Prospect 40%	Rs.21,600/-
Total Income	Rs.75,600/-
Less : 50% for personal expenses	Rs.37,800/-
Annual loss of dependency	Rs.37,800/-
Multiplier '18' (Rs.37,800 18)	Rs.6,80,400/-
Add : General damages (Rs.15,000/- for funeral expenses Rs.15,000/- for loss of estate)	Rs.30,000/-
Total compensation	Rs.7,10,400/-

The claimants/appellants also submit that they have received the awarded amount of Rs.3.10.000/- along with interest in terms of direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.4,00,400/- would become payable to the appellants/claimants by the insurance company together with interest assessed @ 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.

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.)