S/L 16
13.7.2021
Court No.26
SD

FMA 163 of 2021
(Via Video Conference)

Smt. Kakoli Ghosal (Bhattacharya) & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Subhankar Mandal
... for the Appellants/Claimants.
Ms. Sucharita Paul
... for the Respondents/Insurance Co.

The appeal has been filed against the judgment and award dated December 20, 2019 passed by the learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Purba Bardhaman in M.A.C Case No. 7 of 2015 (Old M.A.C. Case No. 20/2015), on a claim under section 166 of the Motor Vehicles Act, 1988.

The appellants/claimants submit that the 42 years old victim was earning Rs.10,000/- per month as a pathology technician. However, the tribunal erroneously took the income to be Rs.3,000/- per annum. The appellants further submit that the claimants are entitled to 25% future prospects on the income of the deceased and a total of Rs.70,000/- under the collective heads of general damages in view of the law as it stands now after the judgments delivered by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***.

Mrs. Sucharita Paul, counsel appearing on behalf of the insurance company, submits that the Tribunal was correct in accepting the income of the victim to be Rs.3,000/- in absence of any documentary evidence.

This Court is inclined to accept the submissions made on behalf of the insurance company. However, it is now accepted in this court for some time that in the year 2014, the base income has to be taken at Rs.4,000/- per month. Moreover, such amount of Rs.4,000/- per month does not appear to be exorbitant at all for the year 2014, as an unskilled worker working on all days could have earned Rs.4,000/- per month. Accordingly, on such basis and considering the submissions as advanced by the learned advocates for the parties, in my opinion, the monthly income of the victim should be taken as Rs.4,000/-.

Accordingly, after considering the submissions of the counsel appearing on behalf of the parties, the impugned award is modified and reassessed as follows:

Particulars	Amount (Rs.)
Monthly income	4,000.00
Add 25% future prospect	(+) 1,000.00
	5,000.00
	x 12
	60,000.00
Less: 1/3rd personal expenses	(-) 20,000.00
	40,000.00
Multiplier of 14 to be used	(x) 14
	5,60,000.00
Collective heads of General Damages	(+) 70,000.00
	6,30,000.00
Less: Awarded amount	(-) 4,06,000.00
Differential amount	2,24,000.00

The claimants acknowledge receipt of the entire awarded amount of Rs.4,06,000/- along with interest. The balance amount of Rs.2,24,000/- would become payable to the claimants by the Insurance Company together with interest assessed @ 6 per cent per annum, 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 claimants. Advocate for the claimants will forward the bank account details of the claimants within a fortnight from date to Advocate for the insurance company. The payment shall be made in the proportion decided 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 application, if any, is 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.)