23.06.2021

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F.M.A. 204 of 2021

(Via Video Conference)

Mousumi Patra & ors.
Vs.
National Insurance Co. Ltd. & anr.

Mr. Subhankar Mandal ...For the Appellants/claimants

Mr. Afroze Alam ... For the respondent No.1/ Insurance Company

This instant appeal filed by the claimants is directed against the award and/or judgment dated September 11, 2019 passed by the Learned Judge, Motor Accident Claims Tribunal, 12th Court, City Civil Court, Calcutta in M.A.C Case No. 363 of 2016.

The facts of the case are not in dispute.

The claim was filed under Section 166 of the M. V. Act, 1988. The Learned Advocate for the appellants/claimants submits that the Learned Tribunal committed error in law while reducing the assessed compensation from Rs.41,28,000/ to Rs.28,00,000/ on the ground that the claimants claimed Rs.28,00,000/ in the claim application but fact remains that in **Nagappa –Vs- Gurdayal Singh & ors.**, reported in **2003(2) S.C.C. 274**, the Hon'ble Apex Court held that it is the duty of the Court to pay just compensation after considering materials on record upon the claimant irrespective of claim amount as mentioned in the claim application.

Further, the appellants/claimants submit that the learned Tribunal also committed error in law while granting of compensation considering the net income of the victim. It is further submitted that the provident fund amount of Rs.1,000/- p.m. deducted from the monthly income of the deceased but the fact remains that in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & ors.**, reported in **(2017) 16 S.C.C. 680,** the Hon'ble Apex Court held while calculating annual income of the deceased, the learned Court shall consider actual income less tax components of the deceased. Therefore, monthly income of the deceased is assessed Rs.20,500/- after deducting tax component.

Learned Counsel for the respondent no.1/ Insurance Company conceded the submission of the appellants/claimants.

Be that as it may, considering the submissions of the parties as well as judgment of Hon'ble Apex Court, the award passed by the Tribunal below is modified and recalculated as follows:

Particulars	Amount
Monthly Income	Rs.20,500/- (Gross income less P.Tax)
Annual Income Rs.20,500 X 12	Rs.2,46,000/-
Add Future Prospect 50%	Rs.1,23,000/-
Total annual income	Rs.3,69,000/-
Less personal expenses (1/3rd)	Rs.1,23,000/-
Annual loss of dependency	Rs.2,46,000/-
Multiplier (17) Rs.2,46,000 X 17	Rs.41,82,000/-
Add : General Damages	Rs.70,000/-
Total : Compensation	Rs.42,52,000/

The appellants/claimants also submit that they have received the awarded amount of Rs.28,00,000/- along with interest from the Insurance Company. Therefore, balance amount of Rs.14,52,000/- which shall be paid by the respondent/Insurance Company along with 6% interest from the date of filing till payment to the claimants within 30 days of receipt of particulars of their bank accounts to be supplied by their learned Counsel to the learned 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 bearing F.M.A. No.204 of 2021 shall stand disposed of.

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.

(Shekhar B. Saraf, J.)