

S/L 14
23.8.2021
Court No.26
SD

**FMAT 300 of 2019
(Via Video Conference)**

Rajeshwari Tirkey Xaxa & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman

...for the Appellant/Claimants.

Ms. Sucharita Paul

...for the Respondents/Insurance Co.

CAN 1 of 2021:

Since the original application is not found in the file, the photocopy of the application for recording death of appellant no. 2, is taken on record and the same be treated as original.

On perusal of the pleadings and the documents annexed, this Court is satisfied and allows such prayer.

Accordingly, the above application, being CAN 1 of 2021 stands allowed and the name of the appellant no. 2 is allowed to be expunged from the cause title of the memorandum of appeal. The department is directed to take steps for such purpose.

FMAT 300 of 2019:

On the oral prayer of the counsel appearing on behalf of the appellants/claimants, the delay of 189 days in filing the appeal is condoned. No serious objection has been raised by Ms. Sucharita Paul, counsel appearing on behalf of the Insurance Company.

The above appeal has been filed by the claimants against the judgement and award dated 7th June, 2018, passed by the Judge, Motor Accident Claims Tribunal, Additional District & Sessions Judge, 2nd Court, Raiganj,

Uttar Dinajpur, in M.A.C. Case No. 94 of 2017, on a claim under section 166 of the Motor Vehicles Act, 1988.

The claimants submit that the Tribunal erred in not awarding future prospect on the income of the deceased. The claimants are entitled to 25% as future prospects 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***.

The Insurance Company is represented.

Accordingly, on such basis and considering the submissions as advanced by the learned advocates for the parties, the impugned award is modified and reassessed as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly income	3,000.00
Add 25% future prospect	<u>(+) 750.00</u>
	3,750.00
	<u> x 12</u>
	45,000.00
Less: 1/4 th personal expenses	<u>(-) 11,250.00</u>
	33,750.00
Multiplier of 14 to be used	<u> (x) 14</u>
	4,72,500.00
Collective heads of General damages	<u>(+) 70,000.00</u>
	5,42,500.00
Less: Awarded amount	<u>(-) 4,48,000.00</u>
Differential amount	<u>94,500.00</u>

The claimants acknowledge receipt of the entire awarded amount of Rs. 4,48,000/- along with interest. The balance amount of Rs. 94,500/- would become payable to the surviving 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 surviving claimants within a fortnight from date to the Advocate for the insurance company. The enhanced amount shall be equally distributed between the appellant nos. 1, 3, 4 and 5.

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.)