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(Via Video Conference)

F.M.A.T. 257 OF 2021

Dalia Khatun @ Dalia Bibi & Ors.

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Subhankar Mandal

...For the Appellants/
Claimants.

Mr. Rajesh Singh

...For the Respondent /
Insurance Co.

This appeal is directed against the judgment and award dated 11th December, 2019 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, in MAC Case No. 354 of 2017 (CNR No. WBWM010081122017) under Section 166 of the Motor Vehicles Act, 1988 praying for compensation for the death of one 36 years old 'Sk. Amanul Haque', who died in a road accident dated May 17, 2017.

The advocate for the appellants/claimants has challenged the quantum of compensation on the ground that the tribunal erred in not granting the 'just compensation' as it wrongfully restricted the compensation to Rs.10,00,000/-, which was mentioned as 'claim amount' by the appellants/claimants, in the claim application. The appellants/claimants also submitted that they were not granted interest on compensation amount from the date of passing of the

award. Accordingly, it is argued that a lesser quantum of compensation has been awarded by the Tribunal.

Per contra, learned advocate representing the insurance company argues that in the facts and circumstances of the case, there is no further scope of enhancement of the same. It is also pointed out that the Court below had committed an error in deducting 1/4th from the income of the deceased for 'personal expenses' in spite of the fact that there were three number of dependent claimants.

Considering the judgements of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** and **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680** I am of the view that deduction for personal expenses should have been 1/3rd of deceased's income. The tribunal however erred in restricting the compensation amount to Rs.10,00,000/- only. The judgement of **Rajesh & Ors. Vs. Rajbir Singh & Anr.** reported in **(2013) 9 SCC 54**, makes it clear that there is no constraint that the tribunal/Court cannot award compensation amount exceeding the claimed amount. A court can allow compensation more than the claim made/shown by the claimants, if the assessment is just and proper.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	Amount
Monthly Income	Rs.5,616/-
Annual Income	Rs.67,392/-
Add 40% future prospect (Rs.26,956/-)	Rs.94,348/-
Less 1/3 rd for personal expenses (Rs.31,449/-)	Rs.62,899/-
Multiplier '15'	Rs.9,43,485/-
Add 'General Damages' Rs.70,000/-	Rs.10,13,485/-
Total Compensation	Rs.10,13,485/-
Less – awarded by Tribunal and paid by insurer	Rs.10,00,000/-
Balance (enhancement)	Rs.13,485/-

The appellants/claimants acknowledge receipt of the awarded amount of Rs.10,00,000/- in terms of the direction of the tribunal. Accordingly, the balance enhanced sum of Rs.13,485/- would become payable to the appellants/claimants by the Insurance Company together with interest assessed @6% per annum on and 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 appellants/claimants.

If it is found that the appellants/claimants did not receive interest on the sum of Rs.10,00,000/ which they have already received, insurer shall pay interest on the said amount also, at the same rate of 6% per annum, from the date of filing of claim case till the date of payment.

Learned advocate for the appellants/claimants will forward the bank account details of the appellants/claimants within a fortnight from date to the learned advocate for the Insurance Company. The payment shall be made directly in the bank accounts of the appellants/claimants through NEFT/RTGS, in the proportion decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The concerned Department is directed to tag the applications, if any, with the main appeal.

There shall be no further order as to costs.

LCR, if any, may be returned back to the court below.

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.)