27.09.2021
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F.M.A. 681 of 2021

(Via Video Conference)

Manowara Biswas & ors.
Vs.
The Oriental Insurance Co. Ltd. & anr.

Mr. Muktakesh Das ...For the Appellants/claimants

Ms. Sucharita Paul
... For the respondent No.1/Insurance Co.

The above appeal has been filed against the judgment and order dated 30th September, 2020 passed by the Learned Member, Motor Accident Claims Tribunal, District Judge, Nadia, in M.A.C Case No. 98 of 2013 [R – 1306 of 2014], in a claim under Section 166 of the Motor Vehicles Act, 1988.

The claimants submit that the deceased victim was earning Rs.5,000/- per month from his shop. However, the learned tribunal erroneously took the monthly income as Rs.3,000/-. The appellants further state that considering 4 numbers of dependants, 1/4th should have been deducted on account of 'personal expenses' of the victim. It is also submitted that the appellants are entitled to 40% future prospects on the income of the deceased and a total sum of Rs.70,000/- under the collective heads of general damages. The appellants rely on the dictum of Hon'ble Supreme Court in ***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*** in support of their arguments.

Mrs. Paul, learned Advocate appearing on behalf of the insurance company argues that the learned Tribunal was correct in accepting the income of the victim as Rs.3,000/- in absence of any documentary evidence. It is also submitted that the multiplier of 16 should have been adopted in the instant case instead of 17, in view of ***Sarla Verma*** *(supra).*

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 between the years 2011 to 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 2012, 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 as advanced by the learned advocates for the parties, the impugned award is modified and reassessed as follows:

Particulars	Amount (Rs.)
Monthly income	4,000.00
Add 40% future prospect	(+) 1,600.00
	5,600.00
Annual Income X 12	67,200.00
Less: 1/4th personal expenses	(-)16,800.00
	50,400.00
Multiplier of 16	8,06,400.00
Collective heads of General Damages	(+) 70,000.00
	8,76,400.00
Less: Awarded amount	(-) 4,20,000.00
Differential amount	**4,56,400.00**

The claimants acknowledge receipt of the entire awarded amount of Rs.4,20,000/- along with interest. The balance amount of Rs.4,56,400/- 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.

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 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, on priority basis.

(Shekhar B. Saraf, J.)