23.08.2021
ss

F.M.A.T. 361 of 2021

(Via Video Conference)

Bala Soren & ors.
Vs.
The Oriental Insurance Co. Ltd. & anr.

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

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

The instant appeal has been filed by the claimants against the judgment and order dated 25th January, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Malda, in M.A.C. Case No. 270 of 2019 on a claim under Section 166 of the Motor Vehicles Act, 1988.

The claimants submit that the 50 years old victim was earning Rs.10,000/- per month as a mason. However, the learned Tribunal erroneously took the income to be Rs.3,000/- per month. The appellants also submit that the multiplier in the instant case should have been 13 instead of 11. Further, the claimants are entitled to 10% future prospects on the income of the deceased and a total amount of Rs.70,000/- under the collective heads of general damages. The appellants rely on the dictum of Hon'ble Supreme Court in the cases 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***, in support of their argument.

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 to be Rs.3,000/- in absence of proper documentary evidence.

This Court is inclined to accept the submissions made on behalf of the Insurance Company. However, it is now accepted by this Court for sometime that 2015 onwards, the base income has to be taken as Rs.5,000/- per month. Moreover, such amount of Rs.5,000/- per month does not appear to be exorbitant at all for the year 2019, as an unskilled worker working on all days could have earned Rs.5,000/- per month. Accordingly, the monthly income of the victim should be taken as Rs.5,000/-.

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	5,000.00
Add 10% future prospect	(+) 500.00
	5,500.00
Annual income X12	66,000.00
Less: 1/3rd personal expenses	(-) 22,000.00
	44,000.00
Multiplier of 13 to be used X 13	5,72,000.00
Collective heads of General Damages	(+) 70,000.00
	6,42,000.00
Less: Awarded amount	(-) 2,79,000.00
Differential amount	**3,63,000.00**

The claimants acknowledge receipt of the entire awarded amount of Rs.2,79,000/- along with interest. The balance sum of Rs.3,63,000/- would be paid to the appellants by the Insurance Company together with interest assessed at the rate of 6 per cent 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. For such purpose, advocate for the appellants will forward the bank account details of the appellants 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.)