

S/L 16
05.10.2021
Court No.26
SD

**FMAT 578 of 2021
(Via Video Conference)**

Ananda Sarkar & Ors.
Vs.

United India Insurance Co. Ltd. & Ors.

Mr. Muktakesh Das

...for the Appellants/Claimants.

Mr. P.K. Pahari

...for the Respondent/Insurance Co.

It appears to this Court that the instant appeal has been filed out of statutory period. Being satisfied with the cause for delay in filing the instant appeal and since the counsel appearing on behalf of the respondent/Insurance Company did not oppose, this Court condones the delay in filing the instant appeal and it is taken up for hearing.

This appeal is directed against the judgment and award dated September 30, 2019 passed by the learned Additional Judge, Motor Accident Claims Tribunal, Fast Track Court-II, Krishnanagar, Nadia in M.A.C. Case No.106 of 2016 on a claim under Section 166 of the Motor Vehicles Act, 1988 for the accidental death of Kalpana Sarkar on 25.01.2016.

The facts of the case are not in dispute.

The claim was filed under Section 166 of the Act of 1988. Counsel for the appellants submits that the learned Tribunal also committed error in law while not granting the income of the deceased as Rs.4,000/- per month as a Tailor. Counsel for the appellants further submits that the learned Tribunal also committed error in law while not granting 25% additional income towards future prospect since the deceased was above 40 years old and was a self-employed person. He also submits that the learned Tribunal committed error in law while not granting the interest on the compensation award from the date of filing of the claim petition till realization.

Counsel for the appellants/claimants submits that the learned Tribunal granted $\frac{1}{3}$ rd deduction from annual income of the deceased but the same should be $\frac{1}{4}$ th instead of $\frac{1}{3}$ rd.

Counsel for the respondent/insurance company submits that the learned Tribunal is just while not assessing monthly income of the deceased Rs.4,000/- since the claimants failed to produce any cogent evidence before the Tribunal to establish the monthly income of the deceased.

Be that as it may, considering the rival submissions of the parties as well as observation of the Hon'ble Supreme Court in ***Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*** reported in **(2009) 6 SCC 121** and ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in **(2017) 16 SCC 680**. Following the general practice of our High Court, the award passed by the Tribunal is modified and recalculated as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	4,000.00
Annual Income (Rs.4000/- x 12)	48,000.00
Add future prospect 25%	(+) 12,000.00
Total Income	60,000.00
Less personal expenses $\frac{1}{4}$ th	(-) 15,000.00
Annual loss of dependency	45,000.00
Multiplier 14 (Rs.45000/- x 14)	6,30,000.00
Add General damages	(+)70,000.00
Total compensation	7,00,000.00

The appellants submit that they have received the award amount of Rs.5,57,000/-. But no amount towards interest has been received. Therefore, the appellants are entitled to get 6% interest per annum from the date of filing of the claim application on the principal awarded sum of Rs.5,57,000/-.

The appellants are also entitled to get a sum of Rs.1,43,000/- (Rs.7,00,000 – Rs.5,57,000) with interest 6% per annum from the date of filing of the claim application till payment to the claimants.

The insurance company is directed to pay the abovestated amount within 30 days of receipt of particular of

their bank accounts to be supplied by the counsel for the appellants to the 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 direction.

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.)