Ct. No. 26

4

akb

23.8

2021

F.M.A.T. 660 of 2015

Smt. Ahalladi Das

Vs.

Bajaj Allianz General Insurance Co. Ltd. & Anr.

(Via Video Conference)

Mr. Saidur Rahaman ...**For the Appellant/Claimant**

Mr. Soumalya Ganguli ...**For the Respondent/Insurance Co.**

On the oral prayer of the learned Counsel appearing on behalf of the appellant/claimant, the delay of 56 days in filing the appeal is condoned. No serious objection has been raised by Mr. Soumalya Ganguli, learned Counsel appearing on behalf of the respondent/Insurance Company.

This appeal is directed against the judgement and award dated January 30, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Third Court, Dakshin Dinajpur at Balurghat in M.A.C. Case No. 214 of 2013.

Mr. Saidur Rahaman, learned Counsel appearing for the appellant/claimant submits that the deceased was a housewife and her earning was Rs. 3,000/- per month, but the learned Tribunal has refused to accept the same and mechanically passed an award for Rs.50,000/- only as a lumpsum.

Counsel for the claimant referred the case of ***Laxmi Devi Vs. Mohammad Tabbar***, reported in **2008 ACJ 1488 (SC)**, wherein it was held that even an unskilled labour can earn Rs.3,000/- per month. As such, the income of the deceased who was aged about 60 years should be taken at Rs.3,000/- per month and compensation should be assessed on the basis of the said income.

On the other hand, Mr. Soumalya Ganguli, learned Counsel for the respondent No. 1/Insurance Company submits that the instant claim has been filed by the married daughter of the deceased and not dependent of the said deceased. As such the claim is not maintainable.

In reply, Mr. Rahaman submits that the claim by a married daughter is quite maintainable. To buttress his argument, he relied upon the decisions of the Hon'ble Apex Court in the cases of ***National Insurance Co. Ltd. Vs. Birender and Ors.,*** reported in **(2020) 11 SCC 356** and ***Montford Brothers of St. Gabriel and Anr. Vs. United India Insurance Co. Ltd. & Anr.***, reported in **(2014) 3 SCC 394**.

This Court is totally convinced with the submissions made on behalf of the claimant/appellant. I am of the view that the claimant/appellant herein is entitled to get compensation in the present case. I further hold that the income of Rs.2,800/- per month for the deceased would be reasonable. Therefore the income of the deceased is taken at Rs. 2,800/- per month.

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

Monthly Income	**Rs. 2,800/-**
Annual Income	**Rs. 33,600/-**
Less 1/3rd for personal & living expenses	**Rs. 11,200/-**
Annual dependency	**Rs. 22,400/-**
Multiplier '5'	**Rs.1,12,000/-**
Add 'General Damages'	**Rs. 4,500/-**
TOTAL Principal Compensation	**Rs.1,16,500/-**
LESS – awarded by Tribunal and paid by insurer	**Rs. 50,000/-**

BALANCE (enhancement) **<u>Rs. 66,500/-</u>**

The Insurance Company will pay the balance principal compensation of Rs. 66,500/- along with interest @ 6% per annum on the entire compensation amount on and from the date of filing of the claim application till the date of payment.

Learned Counsel for the appellant will forward the bank account details of the appellant within three weeks from date to the learned Counsel for the Insurance Company. The Insurance Company will ensure payment of the said amount within one month after recept of the bank particulars.

With the aforesaid directions the instant appeal is disposed of.

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.)