

Ct. No. 26
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F.M.A. 2401 of 2004
(Via Video Conference)
with
IA No. CAN 1 of 2004, CAN 2 of 2008 & CAN 3 of 2014
Smt. Lilabati Maity & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik ...For the Appellants/Claimants

Mr. Sanjay Paul ...For the Respondent/Insurance Co.

The appeal is directed against the judgment and award dated July 13, 2004 passed by the learned Judge, Motor Accident Claims Tribunal, Purba Midnapore in M.A.C. Case No. 95 of 2003/ 945 of 2003.

The claim was filed under Section 166 of the Motor Vehicles Act, 1988. The learned Counsel appearing on behalf of the appellants/claimants submit that the learned Tribunal committed error in law while not assessing the monthly income of the deceased Rs.3,000/- instead of Rs.15,000/- notional annual income on the basis of uncontroverted oral evidence as adduced by the widow of the deceased.

He further submits that the learned Tribunal committed error in law while not granting 10% additional income towards future prospect since the deceased was 53 years old self employed person.

He submits that the learned Tribunal committed error in law while deducting 1/3rd instead of 1/4th income of the deceased towards personal expenses since the deceased leaving six dependants behind him. Mr. Banik further submits that the learned Tribunal also committed error in law while granting Rs.10,000/- instead of Rs.70,000/- towards general damages.

In reply Mr. Paul, the Learned Advocate for the respondent Insurance Company submits that the award passed by the learned Tribunal is absolutely just and there is no scope of interference and/or modification of the award.

After having heard the learned Counsel appearing on behalf of the parties and considering the judgments 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 and also following the practice of this Court on the point of monthly income, I find substance in the arguments of the appellants. Since the accident occurred in the year 2003, in a claim under section 166 of the Motor Vehicles Act, 1988, an amount of Rs.2,500/- per month does not appear to be exorbitant. Appellants are also justified in praying for 10% additional income towards future prospect since the deceased was 53 years old self employed person and deduction towards personal expenses shall be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$ as adopted by the Tribunal. However, the general damages shall be Rs.70,000/- instead of Rs.10,000/-.

Accordingly, the impugned award is modified and recalculated in the manner as follows:-

Monthly income	Rs. 2,500/-
Yearly (2500 X 12)	Rs. 30,000/-
10% Additional Income toward future prospect	Rs. 3,000/-
Annual Income	Rs. 33,000/-
$\frac{1}{4}^{\text{th}}$ deduction on personal Expenses	Rs. 8,250/-
Loss of annual dependency	Rs. 24,750/-
Multiplier 11 (24,750 X 11)	Rs.2,72,250/-
General Damages	Rs. 70,000/-
Total Compensation	Rs.3,42,250/-

Mr. Banik acknowledges that his clients have already received the awarded amount of Rs.1,20,000/-. Accordingly, the balance enhanced sum of Rs.2,22,250/- would become payable 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 till payment within a period of 45 days from the date of receipt of the Bank account particulars of the appellants. The payment shall be made in the same manner and proportion as decided by the Court below.

Learned Counsel for the appellants will forward the bank account details of the appellants within a fortnight from date to the learned Counsel for the Insurance Company.

With the aforesaid directions the instant appeal is disposed of.

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