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(Via Video Conference)

F.M.A. 2443 of 2014

The Oriental Insurance Co. Ltd.
Vs.
Sri Madan Kubir @ Madan Gopal Kubir & Ors.

Mr. Parimal Kumar Pahari
...For the Appellant/
Insurance Co.

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

Being aggrieved by and dissatisfied with the judgment and award dated April 28, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Paschim Medinipur in M.A.C. Case No. 174 of 2010, the instant appeal has been filed by the appellant/insurance company on various grounds.

Mr. Parimal Kumar Pahari, counsel appearing on behalf of the appellant/insurance company has drawn the attention of this Court towards the main ground as canvassed in the appeal, the same is with regard to involvement of the offending vehicle in the alleged motor accident. He submitted that the tribunal has committed an error in coming to conclude that the alleged accident was caused by the offending vehicle (Pick up Van) bearing Registration No.BW-33-4664. He further submitted that the tribunal Judge has wrongly applied the multiplier 15 while passing the impugned award as the age of the victim was 25 years at the time of his death.

Per contra, Mr. Krishanu Banik, counsel for the respondents/claimants has submitted that his clients have successfully proved the involvement of the offending vehicle in the alleged accident. Moreover, he relies on a decision of this Hon'ble High Court, Calcutta in the case of ***New India Assurance Company Ltd. –vs.- Mita Samanta & Ors.***, wherein it has been held, *inter alia*, that if the insurance company has agitated the point of non-involvement of the offending vehicle in the alleged accident, it has a duty to produce the driver and owner of the offending vehicle to prove the non-involvement of the offending vehicle in the alleged accident and failure to do the same, inference may be drawn that the alleged offending vehicle is involved in the said motor accident on the said date. He further argues that the tribunal Judge has committed an error in applying the multiplier 15 instead of 17.

After considering the submission and rival contention of the counsel for the parties, this Court is inclined to accept the submission of counsel for the respondents/claimants and the impugned award is thus modified as stated hereinafter:

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,000/-
Annual Income	Rs.36,000/-

Less 1/3rd deduction	Rs.12,000/-
After deduction the figure comes	Rs.24,000/-
Multiplier 17	Rs.4,08,000/-
General damages	Rs.4,500/-
Total	Rs.4,12,500/-

Counsel for the insurance company submitted that the insurance company has deposited the entire awarded amount with the Registrar General of this Court and the same has been invested in a short term auto renewable fixed deposit account in a nationalised bank.

This Court directs the appellant/insurance company to make payment of Rs.4,12,500/- with interest @ 6% per annum from the date of filing of the claim application till the date of payment to the respondents/claimants within a period of four weeks from the date of communication of their bank accounts' particulars to be furnished by the counsel for the respondents/claimants to the counsel for the appellant/insurance company.

It is further directed that the Registrar General of this Court shall refund the entire deposited amount to the appellant/insurance company with accrued interest after payment of the modified awarded amount to the respondents/claimants through NEFT/RTGS by the appellant/insurance company.

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 department concerned is directed to tag the applications, if any, with the main appeal.

There will be no 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.)