

Ct. 09.11
No. 26 2021
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akb

F.M.A.T. 1064 of 2012
Minor Partha Das & Anr.
Vs.
The Divisional Manager,
New India Assurance Co. Ltd. & Anr.
(Via Video Conference)

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

Mr. Saibalendu Bhowmick
Mr. B. Guha ...For the Respondent/Insurance Co.

The appeal preferred by the claimants is directed against the judgment and award dated November 08, 2005 passed by the learned Additional District Judge, Fast Track Court, Member, Motor Accident Claims Tribunal, Bankura, in M.A.C. Case No. 220 of 2004 (accident took place on 22.7.2004) on a claim under Section 166 of the Motor Vehicles Act, 1988.

The points raised by the appellants/claimants are to the effect that the learned Tribunal Judge erred in law and fact in not assessing the monthly income of the victim deceased as Rs.3,000/- per month and not considering the future prospect of the victim/deceased as 40% and further not granting the adequate compensation on the heads of general damages i.e. (a) loss of estate, (b) funeral expenses and further not deducting 1/3rd on account of own personal living expenses as per the decision of the Constitutional Bench of the Hon'ble Apex Court of India in the case of *National Insurance Company Ltd. Vs. Pranay Sethi*, reported in 2017 ACJ 2700 = 2017 (4) TAC 673.

The respondent/Insurance Company is represented by its learned Counsel.

The learned Counsel for the respondent/Insurance Company contends that the appeal as well as the claim

application are not maintainable against the insurance company itself was not made party in the proceeding. He further contends that the rash and negligent driving of the driver of the offending vehicle has not been proved and there is also violation of terms of the policy by the owner of the offending vehicle in as much as the offending vehicle had no valid permit as well as licence to ply the said vehicle on the road. However the learned Counsel admits that the awarded sum in the impugned award under this instant appeal has been paid to the appellants/claimants. Moreover, the said respondent/insurance company did not file any cross appeal or cross objection or independent appeal against the said award before this Hon'ble Court. The learned Counsel for the respondent/insurance company contends that the appellant has not taken any steps for disposal of this appeal for such long period and the burden of said delay could not be fasten to the respondent/insurance company.

After considering the submissions made by the learned Counsel for the respective parties, this Court is inclined to accept the submission made by Mr. Banik, learned Counsel for the appellants/claimant and hence the impugned award is thus modified as stated hereinafter.

Monthly Income	Rs. 3,000/-
Annual Income (3,000 X 12)	Rs. 36,000/-
40% future prospect	Rs. 14,400/-
Total loss of Income	Rs. 50,400/-
Less 1/3rd deduction (personal Expenses)	Rs. 16,800/-
After deduction the figure comes (Rs.50400- Rs.16,800)	Rs. 33,600/-
Use Multiplier (15) (33,600 X 15)	Rs. 5,04,000/-
Add: General Damages	<u>Rs. 30,000/-</u>

Total Compensation

Rs. 5,34,000/-

Mr. Banik acknowledges that his clients have already received a sum of Rs. 1,32,000/- together with interest and therefore the differential amount of Rs. 4,02,000/- together with 6% interest on and from the date of claim petition till the payment be payable by the respondent/insurance company to the appellants/claimants within a period of 45 days from the date of receipt of the particulars of the bank account of the appellants/claimants to be supplied by his or their Counsel to the learned Counsel for the Insurance Company.

It is made clear that the payment shall be made directly through NEFT/RTGS to the bank accounts of the claimants/appellants in the proportion as order by the Court below.

With the aforesaid directions, the instant appeal being F.M.A.T. 1064 of 2012 shall stand disposed of.

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

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.)