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(Via Video Conference)

F.M.A.T. 1252 OF 2018

Anindita Biswas (Roy) & Ors.

Vs.

National Insurance Co. Ltd.
Krishnagar Branch & Anr.

Mr. Muktakesh Das

…For the Appellants/
Claimants.

Mr. Rajesh Singh

…For the Respondent/
Insurance Co.

On the oral prayer of the learned counsel appearing on behalf of the appellants/ claimants, the delay in filing the appeal is condoned.

The appeal is directed against the judgment and award dated March 20, 2018 passed by the learned Judge, Motor Accident Claims Tribunal Krishnagar, Nadia in M.A.C. Case No. 253 of 2015 in a claim under Section 166 of the Motor Vehicles Act, 1988 for the accidental death of Barun Roy in a vehicular accident dated May 17, 2015.

The appellants/claimants assail the award on the ground that the tribunal erred in law in not considering the deceased's income as per his Income Tax Return. It was argued that a lesser quantum of compensation has been wrongfully awarded by the tribunal.

Mr. Singh, counsel appearing for the insurance company submits that in the facts and circumstances of the case, there is no further scope of enhancement of the compensation amount.

The accident took place on May 17, 2015. It appears from the record that the deceased filed his Income Tax Return for the Assessment Year 2013-14 on February 7, 2014 showing his income after deduction as Rs.1,98,719/-. Similarly, victim's Income Tax Return for the Assessment Year 2014-15 filed on March 30, 2015 showed Rs.2,19,503/- as his income after deduction. The last of such Return was filed during the lifetime of the deceased and nearly 2 months before the accident. the Income Tax Returns have been exhibited by the widow of the deceased as Exhibit A. The concerned Income Tax Inspector, while deposing as PW-3, filed the certified copies of such Returns as Exhibits 10 and 11 before the Court below and proved the correctness of the same. The said Income Tax Inspector through a letter dated August 23, 2017 issued by I.T.O. Ward-41(1) being Exhibit 9, further confirmed the filing of Income Tax Returns as above, by the deceased. The Court below, however did not accept the income of the deceased as shown in the Returns on the ground that the documents in support of such income were not produced or proved.

In my view, the above finding of the tribunal is incorrect. The judgments of the Hon'ble Supreme Court in the case of ***Shashikala & Ors. –vs.- Gangalakshmamma & Anr.***, reported in ***2015 (2) TAC***

867 SC and ***Amrit Bhanu Shali –vs.- Natiional Insurance Company Limited***, reported in ***2012 (4) TAC 775 SC***, *inter alia,* state that the last Income Tax Return filed prior to the death of the deceased, should be considered for assessing his income. The oral and documentary evidence of widow and the Income Tax Inspector cannot be discarded and should be taken into account for assessment of compensation.

Considering the rival submissions of the parties as well as considering the judgements 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***, I find substance in the arguments of the claimants.

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

Particulars	**Amount (Rs.)**
Annual Income	Rs.2,19,503/-
Less 1/3 for personal expenses (Rs.73,167/-)	Rs.1,46,336/-
Add future prospect 40% (Rs.58,534/-)	Rs.2,04,870/-
Multiplier ‘16’	Rs.32,77,920/-
Add ‘General Damages’	Rs.70,000/-
TOTAL Compensation	Rs.33,47,920/-
Less awarded by tribunal and Paid by insurer	Rs.4,17,500/-
Balance (enhancement)	Rs.29,30,420/-

The appellants acknowledge receipt of the awarded amount of Rs.4,17,500/- with interest as directed by the tribunal. Accordingly, the balance enhanced sum of Rs.29,30,420/- would become payable to the claimants/appellants by the insurance company. In the facts of this case, the appellants/claimants agree to receive interest assessed @ 4% per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank particulars of the appellants/claimants.

Counsel for the appellants/claimants will forward the bank details of the claimants within a fortnight from date to counsel for the insurance company. Payment is to be made directly into the bank accounts of the claimants through NEFT/RTGS by the insurer.

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 original applications, if any, with the main appeal.

There will be no order as to costs.

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.)