

23.06.2021

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F.M.A 137 of 2021

(Via Video Conference)

Dolly Sadhukhan

Vs.

The Oriental Insurance Co. Ltd. & anr.

Mr. Rajdeep Bhattacharya ...For the Appellant/claimant

Mr. Sanjay Paul

**... For the respondent No.1/
Insurance Company**

The appeal is directed against the judgment and order dated January 28, 2020 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court No.1, Barasat, North 24 Parganas in M.A.C Case No. 62 of 2009 (1052 of 2014).

The facts of the case are not in dispute.

The claim was filed under Section 166 of the M. V. Act, 1988. The Learned Advocate for the appellant/claimant submits that the Learned Tribunal committed error in law while reducing the assessed compensation from Rs.3,90,000/ to Rs.2,00,000/ on the ground that the claimant claimed Rs.2,00,000/ in the claim application but fact remains that in **Nagappa -Vs- Gurdayal Singh & ors.**, reported in **2003(2) S.C.C.274**, the Hon'ble Apex Court held that it is the duty of the Court to pay just compensation after considering materials on record upon the claimant irrespective of claim amount as mentioned in the claim application.

The Learned Tribunal also committed error in law while not granting any amount towards pain & suffering,

transportation charges as well as medicine expenses.

In turn the Learned Advocate for the respondent/ Insurance Company submits that the Learned Tribunal also committed error in law while assessing monthly income of the victim Rs.5,000/ but fact remains that the victim himself stated in his claim application as well as in the evidence that his monthly income was Rs.4,000/ at the time of accident which is not sustainable in the eye of law since the Learned Tribunal cannot travel beyond the pleadings as well as evidence of the parties.

The Learned Advocate for the respondent insurance company further submits that the Learned Tribunal also committed error in law while granting 25% additional income towards future prospect but fact remains that the victim did not suffer any permanent disability out of such road traffic accident.

Be that as it may, considering the rival submissions of the parties as well as judgment of Hon' ble Apex Court above award passed by the Tribunal below is modified and recalculated as follows:

Particulars	Amount (Rs.)
Monthly Income	4,000.00
Annual Income (x 12)	48,000.00
Loss of income 40% considering the percentage of disability	19,200.00
Multiplier (13)	2,49,600.00
Pain & sufferings, medical expenses and transportation cost-	51,400.00
Total	Rs.3,00,000/

Since the entire amount of Rs.2,00,000/ together with interest that has been awarded by the court below has been paid by the insurance company, the differential amount which comes to Rs.1,00,000/ which shall be paid to the victim within 30 days of receipt of particulars of their bank accounts to be supplied by his counsel to the counsel for the insurance company.

It is made clear that the payments shall be made by NEFT/ RTGS in the proportion as ordered by the Court below.

With the aforesaid directions, the instant appeal bearing F.M.A. No.137 of 2021 shall stand disposed of.

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.

(Shekhar B. Saraf, J.)