

23.02.2022
Item No.33
Ct. No.7
CHC
(disposed of)

**F.M.A.1020 of 2018
(Physical Hearing)**

**Rubeda Bibi & ors.
Vs.
The National Insurance Co. Ltd. & anr.**

Ms. Sima Ghosh
...for the appellants/claimants

Mr. Parimal Kumar Pahari
...for the respondent no.1/
Insurance Company

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process.

When learned advocate for both the parties are agreeable to the expeditious disposal of this appeal, the Court should not stand in the way.

The appeal is directed against the judgement and order dated February 13, 2017 passed by the learned Additional Judge, Motor Accident Claims Tribunal, 4th Court, Berhampore, Murshidabad, in M.A.C. Case No.35 of 2012 on a claim under Sections 163A of the Motor Vehicles Act, 1988 for death of one “Rejaul Karim @ Rejabul” 41 year old, in a road accident, dated 04.10.2011.

The solitary point raised in this appeal pertains to the erroneous assessment of the deceased notionally at Rs.15,000/- per annum ignoring the real income of the deceased, who was a green vegetable seller by profession at the time of accident.

Ms. Ghosh, learned advocate appearing for the appellants/claimants submits that learned Tribunal has committed error in law, while making assessment of the annual income of the deceased notionally at Rs.15,000/- per annum, instead of Rs.36,000/- per annum.

In reply, Mr. Pahari, learned advocate for the respondent no.1/Insurance Company submits that the award passed by the learned Tribunal is absolutely just and there is no scope for interference and/or modification of award.

Mr. Pahari further submits that since the claimants failed to establish the income of the deceased providing documentary evidence, the learned Tribunal rightly assessed annual income of the deceased at Rs.15,000/- notionally.

The deceased victim was 41 year old green vegetable seller by profession. As has submitted by Ms. Ghosh that a green vegetable seller in the year 2011, had an earning of Rs.3,000/- per month, which in the perception of the Court coupled with consideration of the price index, the then prevailed at

the time of accident, it will be most reasonable for all purposes to hold that the deceased victim had an earning of Rs.3,000/- per month from his own business as green vegetable seller. Such amount can neither be exorbitant, nor inflated also in any manner whatsoever.

Having considered the submission of both sides in context with the second schedule appended to Section 163A of the Motor Vehicle Act, income of the deceased should have been assessed at Rs.3000/- per month, which does not appear to be exorbitant and inflated. There is thus strong force in the submission advanced by the learned advocate for the appellants/claimants.

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

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.3,000/-
Annual Income	Rs.36,000/-
After 1/3 rd deduction for personal expenses	Rs.24,000/-
Multiplier (15)	Rs.3,60,000/-
Collective	
General Damages	Rs.9,500/-
Total entitlement	Rs.3,69,500/-
Less: awarded amount (-)	Rs.1,59,500/-
Differential amount	Rs.2,10,000/-

The claimants acknowledge receipt of awarded amount of Rs.1,59,500/- along with interest.

Accordingly, the balance enhanced sum of Rs.2,10,000/- would become payable to the appellants by the respondent no.1/Insurance Company together with interest assured at the rate of 6 per cent per annum on and from the date of filing of the claim petition i.e.30.01.2012 within a period of 45 days from the date of receipt of the bank particulars of the appellants.

Learned advocate for the appellants/claimants will forward the bank account details of the appellants/claimants within a fortnight from date to learned advocate for the respondent no.1/Insurance Company. The payment shall be made in the proportion as already decided by the court below.

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

There shall be no order as to costs.

L.C.R., if any, may be returned back to the court below, if received in the meantime.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)