

15.03.2022
Item No.1
Ct. No.7
CHC
(disposed of)

**F.M.A.2667 of 2015
(Physical Hearing)**

**Sarmishtha Biswas & ors.
Vs.
Oriental Insurance Company Limited & anr.**

Mr. Ashique Mondal
...for the appellants/claimants

Mr. Sanjoy Paul
...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.

It is submitted by Mr. Ashique Mondal, learned advocate for the appellants/claimants that since the appellants/claimants have been suffering from financial distress for want of sufficiency of money for their sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this case, which is not opposed by the learned advocate representing the Insurance Company/respondent no.1.

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

Mr. Ashique Mondal, learned advocate representing the appellants/claimants files paperbook in Court. The same may be kept with the record.

The instant appeal has emerged out against the judgement and award dated 29.04.2014, passed by the learned Judge, Motor Accident Claims Tribunal, (3rd Court at Alipore), South 24 Parganas, in M.A.C. Case No.72 of 2011, on a claim under Section 166 of the Motor Vehicles Act, 1988, granting award to the tune of Rs.66,53,540/- to the claimants/appellants for the death of one Biplab Ranjan Biswas, in a vehicular accident, occurred on 06.08.2011 by reason of involvement of vehicle bearing No.WB-29/3837 in consequence of rash and negligent driving.

The compensation was awarded upon consideration of evidence, both oral and documentary with which the appellants/claimants were not satisfied. Hence this appeal.

In course of hearing of this appeal, all the points raised are squeezed into two; one pertaining to non consideration of future prospects leading to inadequate quantification of the award, and the other relating to 'general damages', though granted at the rate of Rs.9,500/-, but according to appellants/claimants, it should have been Rs.70,000/- as per settled proposition of law.

While making elaboration of the points, referred hereabove Mr. Mondal submits that learned Tribunal has erred in law by not granting loss of future prospects in spite of the deceased remaining in permanent employment as a Medical Officer under the Government of West Bengal.

The deceased/victim left this world, when he was 49 years old, leaving behind three dependents.

As regards inadequate amount of general damages to the extent of Rs.9,500/- Mr. Mondal, submits with all intensity that the amount should have been fixed at Rs.70,000/-, instead of Rs.9,500/-, as erroneously granted in this case.

Reliance is thus placed by Mr. Mondal on a decision reported in ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in **(2017) 16 SCC 680** to fortify the points raised in this appeal.

Relying upon such decision Mr. Mondal submits that claimants are entitled to future prospects at the rate of 30% of the income of the deceased.

Per contra, Mr. Sanjoy Paul, learned advocate representing the respondent no.1/Insurance Company submits that learned Tribunal has rightly assessed the compensation amount upon considering pros and cons of the case and no further enhancement is necessary. Therefore, no interference at this stage is called for.

Having considered the submission thus advanced by both the parties, and bearing in mind the proposition of the law as already decided by the Apex Court in the case of ***Pranay Sethi & ors. (Supra)*** together with the precedence of this Court on the point of future prospect, and general damages, the Court finds substance in the submission of the appellants/claimants.

The appellants/claimants should have been compensated on account of loss of future prospects, and also general damages.

The rate of interest, though taken as a point of appeal, but upon perusal of the judgement, it appears that interest component has been taken care of by the learned Tribunal in application of the provisions under Section 171 of the M.V. Act. As such, such point does not require any elaboration on this issue.

No other point is raised in this appeal.

The award passed by the learned Tribunal needs modification after a revisit to the impugned judgement in context with the points raised in the appeal so as to make it just and proper, and with this modification there will be no prejudice caused to either of the parties to this case.

Accordingly, the above order passed by the learned Tribunal is thus modified to the extent mentioned hereinbelow and recalculated as follows:-

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.63,885/-
Yearly income	X 12
	Rs.7,66,620/-
Deduction 1/ 3	(-) Rs.2,55,540/-
	Rs.5,11,080/-
Add 30% future prospect	(+) Rs.1,53,324/-
	Rs.6,64,404/-
Multiplier (Age-49 years)	X 13
	Rs.86,37,252/-
Add General Damages	(+) Rs.70,000/-
	Rs.87,07,252/-
Less Tribunal's Award	(-) Rs.66,53,540/-
Payable	Rs.20,53,712/-

The claimants/appellants acknowledge receipt of the entire awarded amount of Rs.66,53,540/- along with interest.

The balance sum of Rs.20,53,712/- is payable to the appellants/claimants by the respondent no.1/Insurance Company together with interest assessed at the rate of 6% per annum on and from the date of fling of the claim petition till the payment within a period of 30 days from the date of receipt of the bank account particulars of the appellants/claimants. To give effect to such order, 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 by the respondent no.1/Insurance Company directly in the bank

accounts of the appellants/claimants through NEFT/RTGS in accordance to the proportionate share as indicated in the impugned judgement dated 29.04.2014.

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 will 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.)