28.01.2022
Item No.5
Ct. No.7
CHC
(disposed of)

F.M.A.47 of 2022
(Via Video Conference)

Beauty Bala @ Buti Bala (Paul) & anr.
Vs.
Shriram General Insurance Company Limited & anr.

Mr. Muktakesh Das
...for the appellants/claimants

Mr. Rajesh Singh
...for the respondent no.1/ Insurance Company

Learned advocates for both the parties are ad idem, on the issue that the instant appeal may be disposed of giving a go-bye to the technicalities involved in the process.

It is submitted by the learned advocate for the appellants/claimants that the appellants have all required documents, and learned advocate may furnish the same in the interest of ensuring expeditious disposal of this appeal, which is not opposed by the learned advocate for the respondent no.1/Insurance Company.

When both the parties are consensus on such issue and accordingly urging for expeditious disposal of this appeal, the Court should not stand in the way.

The appeal is directed against the judgement and order dated 31st March, 2021, passed by the learned Judge, Motor Accident Claims Tribunal and Additional District & Sessions Judge, Fast Track Court IV, at Krishnanagar, Nadia, in M.A.C. Case No.41 of 2016 on a claim under Section 166 of the Motor Vehicles Act, 1988, for the sudden death of one 35 years old Badal Bala, a carpenter, having an earning of Rs.10,000/- per month, in a road accident, dated 12th November, 2015.

Mr. Muktakesh Das, learned advocate appearing for the appellants primarily urges before the Court that the Tribunal has erred in law in assessing the income of the deceased at Rs.3,000/- per month, instead of considering the actual income of the deceased earned at the relevant point of time.

The actual income earned by the deceased at the rate of Rs.10,000/- not being taken into account by the Tribunal in deciding the quantum of compensation, there has been inadequate quantification of the award, which can hardly be regarded as just and proper.

Mr. Rajesh Singh, learned advocate representing the Insurance Company/respondent no.1 submits that award has been properly assessed upon considering pros and cons of the case, available under Section 166 of the M.V. Act, 1988 and there is no scope for making any alteration with respect to the award already granted by the Tribunal. Upon taking such points, the Insurance Company has proposed for dismissal of this appeal.

Upon perusal of the judgement, it appears that Tribunal has assessed the income of the deceased notionally at Rs.3,000/- per month, ignoring the oral evidence, adduced by the witness in this case, which disclosed that at the time of the accident, the deceased carpenter had an income of Rs.10,000/- per month. Though there has been no documentary evidence adduced in support of the income of the deceased, but when it is a piece of social resolution, the oral evidence adduced by the claimants cannot be given a go-bye.

When the accident was held on 12th November, 2015, leading to the death of a carpenter, when he was 35 years old having an income of Rs.10,000/- per month, and same was sought to be established by oral evidence. But in the year 2015, in all fitness of the things and also having regard to the price index prevailed at the material point of time, the income of the deceased should have been assessed at Rs.5,000/- per month. In that view of the matter, assessment of the income by the Tribunal does not appear to be on sound footings.

Considering the rival submission of the parties and the general practice and precedent of our Court, the above award passed by the learned Tribunal needs modification, so as to make it just and perfect and with this modification there will be no prejudice caused to either of the parties to this case.

Accordingly, the impugned order is modified and re-calculated in the manner referred hereinbelow.

Particulars	**Amount (Rs.)**
Monthly Income	Rs.5,000/-
Annual Income	Rs.60,000/-
Add: 40% Future Prospect (Rs.24,000/-)	Rs.84,000/-
Deduction 1/ 3rd for Personal Expenses (Rs.28,000/-)	Rs.56,000/-
Multiplier 16	Rs.8,96,000/-
Add General Damages	Rs. 70,000/-
Total entitlement	Rs.9,66,000/-
Less awarded amount	Rs.6,07,600/-
Differential amount	**Rs.3,58,400/-**

The appellants/claimants acknowledges receipt of the awarded sum as directed by the learned Tribunal.

Accordingly, the balance enhanced sum of Rs.3,58,400/- (Rs.9,66,000/- - Rs.6,07,600/-) would become payable to the appellants by the Insurance

Company together with interest at the rate of 6% interest per annum on the same from the date of filing of the claim application till realization, and the said enhanced sum accordingly is directed to be paid by the Insurance Company/respondent no.1 within a period of 45 days from the date of receipt of bank particulars of the appellants. The payment should be made directly to the bank accounts of the appellants/claimants through NEFT/RTGS, in the proportion fixed by the learned Tribunal Judge.

With the aforesaid directions, the instant appeal is disposed of.

L.C.Records be returned forthwith, if received in the meantime.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

There shall be no further 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.

(Subhasis Dasgupta, J.)