02.02.2022
Item No.49
Ct. No.7
AGM/RKB
(disposed of)

F.M.A. 46 of 2022

(Physical Hearing)

Sabita Bag & Ors.
Vs.
National Insurance Company Limited & Ors.

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

Mr. Sanjoy Paul
...for the respondents.

Learned advocates for both the parties are ad item on the point 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 that since the appellants/claimants have been suffering from financial distress for want of sufficient money for her 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/respondents.

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.

The appeal has emerged out against the judgement and award dated 22nd September, 2021 passed by learned Additional District Judge, Fast Track Court-IV, Krishnanagar, Naida in M.A.C.C. Case No.256 of 2015, on a claim case under Section 166 of the M.V. Act, 1988, granting award to the tune of Rs.6,07,600/- to claimants/appellants for the death of one Sujit Bag, in a vehicular accident, occurred on 28th April, 2015, by reason of involvement of vehicle bearing No.WB-52-A/6599 in consequence of rash and negligent driving.

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

Mr. Muktakesh Das, learned advocate representing the appellants/claimants urges solitary ground pertaining to erroneous assessment of income of deceased in support of this appeal. The Tribunal has thus erroneously assessed monthly income of the deceased at Rs.3000/- notionally, instead of Rs. 7000/- per month, as the deceased was a mason by occupation. Mr. Das further submits that although the claimants failed to produce any documentary evidence before the Tribunal, but considering the oral testimony adduced by the claimants, the learned Tribunal ought to have assessed monthly income of the deceased at Rs.7000/- notionally.

Per contra, Mr. Sanjoy Paul, learned advocate representing the Insurance Company/respondents submits that learned Tribunal has rightly assessed the income of the deceased at Rs.3000/- per month notionally, since the claimants failed to adduce any cogent evidence before the Tribunal to establish that the deceased was mason and used to earn Rs.7000/- per month. Therefore, no interference at this stage is called for.

As regards the other points raised in this appeal, Mr. Paul contends that the award has been rightly decided by Tribunal upon considering pros and cons of the case. The learned Tribunal has already granted appropriate future prospects and allowed Rs.70,000/- as general damages under collective heads.

The deceased left this world being a victim of accident, when he was 31 years old mason, having substantial income to maintain his dependents. The accident was admittedly held on 28th April, 2015.

Having considered the submissions, thus advanced by both the parties and bearing in mind the general practice and precedent of this Court on the point of monthly income, the Court finds substance in the submission of the appellants. In the year 2015 a mason can be reasonably expected to be having an income of Rs.5000/- (five thousand) per month with reference to price index the then prevailed. An amount of Rs. 5000/- per month does not appear to be exorbitant.

Assessment of income as reached by Tribunal needs modification simply for perfect quantification of award.

The award passed by the learned Tribunal needs modification after a revisit to the impugned judgement in context with the solitary point 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:

Particulars	**Amount (Rs.)**
Monthly Income	**Rs.5000/-**
Yearly income	**Rs.60,000/-**
Deduction 1/3	**(-)Rs.20,000/-**
Add 40% future prospect	**(+)Rs.16,000/-**
	Rs. 56,000/-
Multiplier (Age-31 years)	**x 16**
	Rs. 8,96,000/-
General Damages	**(+) Rs. 70,000/-**
	Rs.9,66,000/-
Tribunal Award Payable	**(-) Rs.6,07,600**
	Rs.3,58,400/-

The claimant acknowledges receipt of the entire awarded amount of Rs.6,07,600/- along with interest.

The balance sum of Rs.3,58,400/- would become payable to the appellants by the insurance company together with interest assessed at the rate of 6 per cent 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 account particulars of the appellants. For such purpose, learned advocate for the appellants will forward the bank account details of the appellant within a fortnight from date to learned advocate for the insurance company.

The payment shall be made by the insurance company directly in the bank accounts of the claimants through NEFT/RTGS.

With the aforesaid directions the instant appeal is disposed of.

In view of the disposal of this appeal, connected application is also disposed of.

There will 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.

(Subhasis Dasgupta, J.)