S/L No.51
23.03.2023
Ct-237
(RD)

In the High Court at Calcutta
(Civil Appellate Jurisdiction)
Appellate side

FMA 2017 of 2016

Smt. Shyamali Patra & Ors.
Vs.
The National Insurance Co. & Ors.

Mr. Amit Ranjan Roy, Adv.
.... For the Appellant

Mr. Rajesh Singh, Advocate
... for the Insurance Company

Quantum of compensation has been challenged by preferring this appeal on behalf of the claimants.

One claim petition under Section 166 of the Motor Vehicles Act was filed with a prayer for compensation of Rs. 5,00,000/-.

One Ashok Patra died in a motor accident on 21.03.2007 for rash and negligent driving of a truck bearing no. WB 29/6355. At the relevant point of time the deceased was a man of 36 years having income of Rs. 4,000/- per month. After the accident Kharagpur (L) PS Case No. 66 of 2007 dated 21.03.2007 was started and ended with charge sheet against the driver of the vehicle.

National Insurance Company contested the claim case by filing written objection. Claimants examined 6 (six) witnesses and in course of their evidence a good number of documents were admited in evidence.

Ld. Tribunal after the considering the entire evidence on record awarded the compensation to the tune of Rs. 3,29,500/- taking income of the deceased as Rs. 30,000/- per annum.

Feeling aggrieved the instant appeal has been preferred on the ground that Ld. Tribunal committed error in taking income as Rs. 30,000/- per annum and that apart, Ld. Tribunal did not consider the future prospect and general damage in terms of principle laid down in ***National Insurance Company Ltd. Vs. Pranay Sethy and others (2017) 16 SCC 680.***

Claimants have taken an effort to prove the income of the deceased as Rs. 6,000/- at the time of death of Ashoke Patra by adducing evidence of PW6 who proved certificate issued by S.P. Construction Company and also adduced evidence of guardian (PW4) who testified that deceased was giving tuition to his daughter in lieu of Rs. 2,000/- per month.

Ld. Advocate, Mr. Amit Ranjan Roy, appearing on behalf of the claimants has contended that monthly income of the deceased was not correctly considerd by the tribunal in terms of evidence of PW1 & PW6 together with the certificate issued by S.P. Construction. Mr. Roy has also submitted that principle laid down in ***Pranay Sethy*** (supra) has not been adhered to.

Ld. Advocate, Mr. Rajesh Singh, supported the judgment passed by Ld. Tribunal.

With regard to certificate issued by the S.P. Construction, I find hardly any reason to rely without being substantiated by any salary register of the company. In addition, PW4 did not corroborate the income of Rs. 2,000/-. In this situation no other option is left to this Court but to take notional income of Rs. 3,000/- per month for assessment of compensation.

Form the aforesaid view of the matter, I propose to determine the compensation in terms of principle laid down in ***Pranay Sethy*** (supra) as follows:-

Monthly income	: Rs. 3000/-
Annual income	: Rs. 36,000/-
Less 1/3rd deduction for personal expenses(Rs. 12000/-)	:Rs. 24,000/-
40% future prospect (Rs. 9600/-)	:Rs.33,600/-
Multiplier 15	: Rs. 5,04,000/-
Add General Damages (Rs. 70,000/-)	: Rs. 5,74,000/-
Less awarded by Tribunal	:Rs. 3,29,5000/-
Enhancement	Rs. 2,44,500/-

Therefore, claimants are entitled to compensation to the tune of Rs. 5,74,000/- subject to payment of *ad velorem* court fees on the amount of Rs. 74,000/- before the Learned Tribunal.

It is reported that claimants have already received Rs. 3,29,500/- awarded by the Ld. Tribunal without interest.

Therefore, respondent/ National Insurance Company is directed to pay the balance amount of Rs. 2,44,500/- along with interest @ 6% per annum from the date (10.05.207) of the filing of the application till the date of deposit of the amount in the office of the Learned Registrar General of this Court.

Respondent/ National Insurance Company is directed to deposit the interest @ 6% per annum on the amount of Rs. 3,29,500/- from the date of filing of the claim petition (10.05.2007) till the date of deposit of the amount before the Learned Tribunal.

Respondent/Insurance Company is directed to deposit in the aforesaid amount in the office of the Ld. Register General with interest within 6 weeks from date.

Ld. Registrar General is requested to disburse the amount between the two claimants namely Shyamali Patra (wife) & Snehalata Patra (daughter) in equal share on proper identification on proof.

With the aforesaid observation appeal being no. FMA 2017 of 2016 stands disposed of.

All pending application, if there be any, stand disposed of accordingly.

The Tribunal Records along with a copy of this order be transmitted back immediately.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)