

07.12.2023
SL No.10
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 567 of 2022

**Sonalirani Bhowmik (Dhara) & Ors.
Vs.
National Insurance Co. Ltd. & Anr.**

Mr. Jayanta Kumar Mandal
..... for the appellants/claimants.

Mr. Rajesh Singh
...for the respondent /Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 2nd Day of September, 2021 passed by learned Judge, Motor Accident Claims Tribunal, Tamruk, Purba Medinipur, in M.A.C. Case no. 139 of 2014 under Section 166 of the Motor Vehicles Act.

The brief facts of the case is that the present appellant, being the claimants have preferred an application before the learned tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 29,02,500/-alongwith with interest @ 6% per annum in favour of the claimants.

The present claimants being the parents and

the widow of the deceased have preferred the instant appeal for enhancement of the award.

Learned advocate for the appellants submits that the learned tribunal has committed error in assessing the compensation. In this case the annually income of the deceased was calculated to be Rs. 1,57,512/- it should be Rs.1,64,639/-. He produced the exhibited documents i.e. the banks statement of the deceased to prove that point. He also argued that the future prospects was awarded to 40% of the annual income of the deceased. The deceased was in a permanent job under Haldia Refinery and he was within the age of 40 years. In this case, the future prospects would be 50%. Learned advocate for the appellant further submits that in this case the general damages awarded Rs. 70,000/- but after the observation made by the Hon'ble Supreme Court in **Pranay Sethi**, the three years has already been elapsed and the award was passed by the learned tribunal in the year 2021. So, in this case the 10% of the general damages has to be added. So, in this case the general damages would be Rs. 77,000/- instead of Rs.70,000/-.

Learned advocate appearing on behalf of the insurance company submits that the award passed by the learned tribunal suffered no illegality. The learned tribunal has considered the entire materials on record and after perusing the evidences. The

award was passed. He further argued that the claimants has received the award. So at this juncture, the instant appeal is infructuous.

Heard the learned advocates perused the materials on record. In considering the banks stamen placed alongwith this paper books, it appears that the monthly income was of the deceased was Rs.13,126/- but at the last month his salary was increased as Rs.20,253/-. Thus in this case the annual income of the deceased should be Rs. 1,64,639/-. It further appears that the claimants was engaged in Haldia Refinery which was a permanent job and he was aged about 25 years at the time of accident so in this case the general damages would be 50%.

Considering the entire aspects, it appears to me that the award passed by the learned tribunal need be modified.

The just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Annual income be assessed as.....Rs.1,64,639/-
2. Add: 25% Future prospectsRs.82,319/-
Rs.2,46,958/-
3. Less: 1/3rd for personal expenses.....Rs. 82,319/-
Rs. 1,64,639/-
4. Multiplier 18

X 18

Rs. 29,63,502/-
5. Add: General DamagesRs. 77,000/-
Rs.30,40,502/-

6. Add: Medical expenses given.....Rs.1,86,298/-
Rs.32,26,800/-

Less: award sum.....Rs. 29,02,500/-

Enhance award..... Rs. 3,24,300/-

After calculation the award comes to Rs. 32,26,800/-. The claimants has already received a sum of Rs. 29,02,500/-. The balance award comes to Rs. 3,24,300/-. The insurance company is directed to pay the balance award amount alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the awarded amount to the claimants according to the proportion as directed by the learned tribunal subject to ascertainment of payment of deficit court fees.

The instant FMA 567 of 2022 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

