**13.12.2023**
**SL No.12**
**Court No. 551**
**Ali**

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

**FMA 756 of 2018**
**With**
**COT 35 of 2021**

**Shriram General Insurance Co. Ltd.**
**Vs.**
**Lila Pashman & Ors.**

Mr. Rajesh Singh
……………. for the appellant/insurance Co.

Mr. Snehasis Jana
…for the respondents/claimants.

COT 35 of 2021 was directed to be listed alongwith this appeal vide Order dated 29.11.2022 but the COT is not appearing in the list. Let a supplementary list be prepared regarding the COT 35 of 2021 today.

The instant appeal has been preferred against the Judgment and Award dated 29$^{th}$ day of May, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, Purba Bardhaman, in M.A.C. Case no. 6 of 2014.

The brief facts of the case is that the present respondent Nos. 1 and 2 being the parents of a boy aged about 18 years has preferred an application under Section 166 of the Motor Vehicles Act before the learned tribunal for getting compensation on the ground that their bachelor son 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.

The claim case was contested by the Insurance Company.

Learned tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs. 3,54,000/-in favour of the claimants alongwith interest @ 8% per annum.

Being aggrieved by and dissatisfied with the award the insurance company has preferred this appeal.

Learned advocate for the insurance company submits that the impugned award passed by the learned tribunal is erroneous. The so-called offending vehicle bearing No. WB-41/8195 was not at all involved in the said accident. He submits that the alleged accident happened on 08.07.2013 and the FIR was lodged on 01.09.2013. There was delayed FIR and no explanation is there regarding such inordinate delay. There is every chance of false implication of the offending vehicle in this case. He further argued that the learned tribunal has not considered the entire materials on record and passed the impugned award without perusing the materials regarding the non involvement of the offending vehicle.

Learned advocate appearing on behalf of the respondents/claimants submits that the learned tribunal has considered the entire materials on record including the evidences. He also perused the police paper wherefrom the involvement of the offending vehicle being truck No. WB-41/8195 has been sufficiently proved so at this juncture the impugned award cannot be set aside. The respondents/claimants further argued that one cross appeal has been preferred against the instant appeal on the ground that the learned tribunal has failed to provide the future prospects according to the direction of the Hon'ble Supreme Court passed in **Pranay Sethi**. He argued that the income of the deceased was calculated notionally Rs. 3,000/-per month it must be Rs. 4,000/-per month and the claimants are also entitled to get the future prospects which would be added i.e. the 40% of his establish income.

Heard the learned advocate perused the memo of cross appeal. It appears that the learned tribunal has assessed the compensation by fixing the monthly income of the deceased to be Rs. 3,000/- the deceased was aged about 18-20 years. It has been mentioned in the claim application that he was a gas cylinder supplier but no such document or ID card has been produced before the learned tribunal. So, at this juncture, the claim of the claimants/respondents cannot be considered. It appears to me that the learned tribunal has correctly assessed the notional income of the deceased notionally to be Rs. 3,000/-. However, the claimants are entitled to get the benefit of the direction of Hon'ble Supreme Court passed in **Pranay Sethi** regarding the future prospects which would be 40% of his establish income. Accordingly, the award passed by the learned tribunal required to be modified.

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

**Calculation of compensation**

1. Monthly income ....................................Rs.3,000/-
2. Annual Income (Rs.3,000 X 12).........Rs.36,000/-
3. Add: Future Prospects @ 40%.............Rs.14,400/-
   Rs. 50,400/-
4. Less: 50% personal expenses..........Rs. 25,200/-
   Rs. 25,200/-
5. Multiplier 18 X 18
   Rs. 4,53,600/-
6. Add: General Damages..... ................Rs.30,000/-
   Rs. 4,83,600/-
7. Less: award passed by tribunal......Rs. 3,54,000/-

**Enhancement Rs.1,29,600/-**

After calculation the just and proper compensation comes to Rs. 4,83,600/-.The tribunal has already awarded Rs. 3,54,000/-. The enhance award comes to Rs. 1,29,600/-. The entire award shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 2.01.2014.

It appears that at the time of filing of the instant appeal the insurance company has already deposited the statutory amount of Rs. 25,000/- vide

OD Challan No. 3283 dated 05.02.2021 and also deposited an amount of Rs. 5,72,646/- vide OD Challan No. 4250 dated 24.03.2023. The insurance company has already deposited the entire awarded sum alongwith interest @ 8% per annum according to the direction of the learned tribunal.

The office of the learned Registrar General, High Court, Calcutta is directed to disburse the entire amount alongwith accrued interest thereon to the claimants within four weeks from the date of passing of this order. The claimants are directed to receive the same equally and they are further directed that they shall inform the appellant/insurance company regarding such receipt and they shall also inform their banks account so that the residue of the instant award may be deposited by the insurance company directly to their bank account through RTGS or NEFT within four weeks thereafter.

The instant FMA 756 of 2023 alongwith COT 35 of 2021 are 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.)**