12 & 13 Ct 237 **18.05.2023**

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FMA 3627 of 2014
With
IA No: CAN 2 of 2023

National Insurance Company Limited
versus
Mamtaj Begum & Ors.

With

COT 51 of 2014
Mamtaj Begum & Anr.
Versus
National Insurance Company Limited & Anr.

Mr. Afroze Alam.
.... For the claimants in FMA 3627 of 2014 and respondents in Cot 51 of 2014.

Mr. Amit Ranjan Roy.
... For the appellants in COT 51 of 2014 and respondent in FMA 3627 of 2014.

<u>CAN 2 of 2023</u>

Learned advocate appearing on behalf of the appellants in cross-objection has not pressed the application and accordingly stands dismissed.

<u>FMA 3627 of 2014</u>

This appeal has been preferred assailing the judgment and award passed by the Motor Accident Claims Tribunal, 3rd Court, Howrah, in connection with Motor Accident Claim Case No. 427 of 2011 under Section 166 of the Motor Vehicle Act whereby learned Tribunal awarded compansation to the tune of Rs. 10,60,500/-.

The instant appeal has been preferred at the instance of National Insurance Company Limited on the ground that deduction of 50% towards personal expenses should have been considered at the time of calculation of compensation.

On behalf of the claimants one cross appeal has been filed assailing the judgment particularly the calculation of the compensation after aplying multiplier 11 and for not considering the future prospect i.e. 40% of the income in terms of age of the victim as well as general damages.

The application under Section 166 of the Motor Vehicle Act was filed on account of death of one Fazlul Kadir Md. Safi in a motor accident on 30.08.2011 at about 5.15 P.M. while deceased was travelling by Scorpio Car bearing No. WB-30C/8098 after finishing their meal at Gourhari Hotel situated by the side of Bombay Raod near Deulbarh. At the time of accident the Scorpio Car was in stationary condition and one dumper lorry bearing No. WB-29/5222 proceeding from Panskura side towards Kolaghat side with high speed dashed the Scorpio Car with great force. In effect Fazlul Kadir Md. Safi sustained severe injury and ultimately died in the hospital. That is why claimants filed this application with a prayer for compensation to the tune of Rs.12,00,000/-.

National Insurance Company Limited contested the claim petition by filing written objection denying all averments of the claim petition contending, *inter alia*, claimants are not entitled to any compensation as prayed for.

In course of trial mother of the victim (Mamtaj Begum) was examined as PW-1 who corroborated the entire contents of the claim petition and proved the documents viz. Certified Copy of FIR, Charge-Sheet, Seizure List, PM Report, Insurance Policy, IT Return Acknowledgment, Trade Licnece, PAN Card, Voter Card ect. and those were admitted in evidence as exhibit 1 to 12.

One Sk. Mafujul Ali, was examined as PW-2 who claimed himself to be an eye witness to the accident which took palce on 30.08.2011 at 5.15 P.M. over N.H. 6 near Gourhari Hotal, Deulbarh under Panskura Police Station and he lodged the FIR to police.

Learned Tribunal after evaluation of the evidence together with documents on record, recorded his finding that due to rash and negligent driving of the vehicle bearing No. WB-29/5222 which was duly insured with the National Insurance Company Limited at the relevant point ot time. Accordingly, learned Tribunal awarded compensation of Rs.10,60,500/-.

I find no reason to contradict the view taken by the learned Tribunal in respect of accidental death of Fazlul Kadir Md. Safi in a motor accident due to rash and negligent driving of the vehicle bearing No. WB-29/5222.

So far as calculation of compensation is concerned, I find that learned Tribunal rightly assessed the monthly income of Rs.12,000/- in terms of IT Return for the assesment year 2009-10. But learned Tribunal deducted 1/3 in stead of 50% on account of personal expenses of the deceased. That apart learned Judge also erred in applying multiplier 11 on the age of parent instead of 17 in terms of the age of the victim.

Finally learned Tribunal did not consider the future prospect as well as general damages in terms of principle laid down in the case ***National Insurance Co. Ltd vs. Pranay Sethi and Ors.*** reported in ***2017 ACJ 2700***.

In the aforesaid view of the matter I propose to modify the award as follows:

Total Income yearly	= Rs.146,860/-
After deduction of 50% for personal expenses	Rs.73,430/-
40% future prospect (73,430 x 40%)	= + Rs.29,372/-

Add total loss of compensation		Rs. 1,02,802/-
Multiplier 17 (age 28)		x 17
		Rs.17,47,634/-
Add General Damages		+Rs.30,000/-
Total compensation		Rs.17,77,634/-
Tribunal awarded a sum of	(-)	Rs.10,60,500/-
Enhanced amount		Rs. 7,17,134/-

Therefore claimants are entitled to Total compensation to the tune of Rs.17,77,634/- along with interest.

It appears from record and submission made by learned advocate appearing on behalf of the National Insurance Company Limited that the appellant/Insurance Company deposited the entire awarded anount along with interest before the office of the learned Registrar General of this Court. It is also appearing from the record that the claimants have already withdrawn Rs.5,00,000/- out of the aforesaid awarded amount.

The National Insurance Company is further directed to deposite the enhanced amount of Rs. 7,17,134/- along with 6% interest from the date (8.12.2011) of filing of the claim petition till the deposit of the amount, within six week from date, before the office of the learned Registrar General of this Court.

Learned Registrar General is requested to disburse the balance amount along with accrued interest thereon, after adjustment of the amount already been withdrawn and also disburse the enhanced anount of Rs. 7,17,134/- to the respondent no.1 (Mamtaj Begum).

With the aforesaid observation ***FMA 3627 of 2014*** along with ***COT 51 of 2014*** stand disposed of. Pending applications, if there be any, also stand disposed of.

Let a copy of the judgment along with Tribunal records, if any, be transmitted to the learned Tribunal at once.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)