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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1118 of 2022

Smt. Barnali Sahani & Anr.
Vs.
National Insurance Company Ltd. & Ors.

Mr. Krishanu Banik
Mr. Tathagata Banik
... For the appellants/claimants

Mr. Deb Narayan Ray
... For the respondent no.1/Insurance Co.

This appeal has been preferred challenging the judgment and award dated 2nd March, 2012 passed by the learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 4th Fast Track Court, Tamluk, Purba Medinipur, in connection with MAC Case No.98 of 2009/49 of 2009.

The claim petition under Section 163A of the Motor vehicles Act, 1988 was filed by the claimants on account of death of one Soumi Sahani in a motor accident happened on 31st December, 2008 at about 10.30 a.m. while she was going to Panchrool High School by the Bus, bearing registration no.WB-33A/4669, from Belda as passenger. Near Egra central bus stand over Kharagpur Contai pitch road, the driver of the bus suddenly pushed break and, in effect, the victim sitting in the back side of the bus fell down on the road and sustained severe head injury. She was taken to Egra SD Hospital and thereafter shifted to Medinipur Medical College and ultimately she succumbed in the SSKM Hospital, Kolkata. Therefore, the claim petition was filed with a prayer for compensation to the tune of Rs.3,00,000/-.

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

To prove the case, claimants examined as many as two witnesses. Father of the victim Sudip Sahani was examined as PW-1 who corroborated the entire contents of the claim petition. In course of his evidence, certified copy of First Information Report, charge sheet, seizure list, referral card, post-mortem report and voter's identity card were admitted in evidence.

One Usha Rani Das Mahapatra was examined as PW-2. She testified that at the relevant period of time Soumi Sahani, i.e., the victim of this case, is to reside in her house as tenant for the purpose of her study and private tuition.

The learned Judge of the Tribunal after considering the evidence together with documents on record, came to his opinion that the award should be calculated on the notional income of Rs.15,000/- as per Second Schedule of the provisions of Section 163A of the Motor Vehicles Act, 1988. Accordingly, the learned Tribunal calculated the compensation after applying multiplier 15. The total compensation was calculated at Rs.1,54,500/- along with interest @ 8% per annum.

Mr. Krishanu Banik, learned advocate, appearing on behalf of the appellants/claimants has submitted before this Court that for calculation of the compensation, income should be considered as Rs.3,000/- per month and multiplier should be 16 instead of 15.

On the other hand, Deb Narayan Ray, learned advocate, on behalf of the respondent no.1/Insurance Company has submitted that the learned Tribunal rightly considered the annual income as Rs.15,000/- as per Second Schedule.

So far as the accidental death of the victim is concerned, no argument has been advanced before this Court. That apart, from the evidence and documents exhibited in this case, I find no reason to come to any contrary view. Only quantum of the compensation has been challenged in this appeal.

Considering the series of judicial precedents, I am of the view that the income of the victim should be recorded as Rs.3,000/- per month as notional income. So far as the multiplier is concerned, it is 16 as per Second Schedule and not 15.

In that view of the matter, I propose to re-assess the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3rd Deduction (personal expenses)	Rs. 12,000/-
	Rs. 24,000/-
Multiplier by 16 (as per age of the victim)	X 16
	Rs.3,84,000/-
Add: General Damages	Rs. 4,500/-
Total Compensation	Rs.3,88,500/-
Less: Awarded by ld. Tribunal & received	Rs.1,54,500/-
ENHANCEMENT	Rs.2,34,000/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.3,88,500/-. It is reported that the appellants/claimants have already received Rs.1,54,500/- along with interest as awarded by the learned Tribunal.

Therefore, the appellants/claimants are entitled to the balance compensation amount of Rs.2,34,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., 5th February, 2009, till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.2,34,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., 5th February, 2009, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants are entitled to withdraw the enhanced compensation amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.88,500/- (Rs.3,88,500/- – Rs.3,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount with interest to the appellants/ claimants in equal share on proper identification and proof.

With the above observations, the appeal, being FMA 1118 of 2022, is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)