05.09. 2023
item No.15
n.b.
ct. no. 551

**FMA 2542 of 2013**

**Haripriya Mondal & Ors.**
**Vs.**
**The M.D. NBSTC, Cooch-Bihar.**

Ms. Sima Ghosh,
Ms. Sabina Khatun,
.....for the appellant
Mr. Sanjoy Paul,
.....for the NBSTC.

The instant appeal has been preferred against the judgment and award dated April 22, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Berhampore, Murshidabadin M.A. C. case No. 403 of 2006.

The brief fact of the case is that the present appellant being the claimants preferred an application before the learned Tribunal under Section 166 of the the M.V. Act for getting compensation from the Insurance Company on the ground that the son of the appellant no.1 was died in the 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 matter was contested by the Insurance Company before the learned Tribunal. The learned Tribunal after hearing both the parties has awarded sum of Rs.1,64,500/- along with 4 per cent interest per annum in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award, the present appellant has preferred this appeal.

Learned advocate for the appellant submitted that the income of the deceased was taken to be Rs.15,000/- per month notionally which is erroneous. The deceased was the student of class XI. He used to give tuition in his house and used to earn Rs.3000/- per month. The evidences were there by virtue of P.W. 1 and PW. 2 to that effect. Thus, in this case the tribunal must have awarded the compensation fixing the monthly income of the deceased to be Rs.3,000/- per month. He also argued that the multiplier adopted by the learned Tribunal is erroneous. She further argued that the 4% interest was only given instead of which the 6% interest may be given.

Leaned advocate appearing on behalf of the Managing Director NBSTC submits that the impugned award passed by the learned Tribunal suffers no illegality. There are not sufficient document to prove the income of the deceased. Thus, the income of the deceased was calculated to be Rs.15,000/- per annum correctly.

He again argued that in considering the multiplier in his case the co-ordinate Bench of this curt in FMA 197 of 2019 has placed reliance upon the schedule mentioned in para 40 of **Sarala Verma.** According to such schedule, the applicable multiplier for the person aged about 15 to 20 years would be 19.

Heard the learned advocate. Perused the materials on record and also perused the evidences placed before the learned Tribunal, it was mentioned in the claim application that the deceased was student of class XI and he used to earn Rs.3,000/- per month from the occupation of his tuition. No evidence regarding any student received tuition or any guardian of student appeared before the learned Tribunal to substantiate the factum. Only one of the claimant has stated the fact as mentioned in the claim application. By corroborating the fact mentioned in the claim application regarding the income, ipso facto cannot prove income of a deceased. In this particular nature of case, the schedule mentioned in 163A of the M.V. Act has to be followed strictly. Thus, I find no infirmity for determination of income of Rs.15,000/- per annum by the learned Tribunal.

Considering the decision of Hon'ble Supreme Court passed in **Sarala Verma**, the claimant is entitled to get the compensation adopting the multiplier of 19; considering the age of the claimant within 15 to 20 years.

For just and proper compensation of this case, the award by the learned Tribunal is hereby modified. The yearly income is Rs.15,000/- less 1/3$^{rd}$ i.e. Rs.5000/-. The yearly income comes to Rs.10,000/-, applicable multiplier 19. So, after applying the multiplier, the award comes to

Rs.1,90,000/-the claimants are entitled to get the general damages amounting to Rs.4,500. So the award come to Rs.1,94,500/-.

Insurance Company is directed to pay the above mentioned award amount to the claimant through the office of Registrar General, High Court, Calcutta along with 6% interest per annum from the date of filing of the claim application i.e. from August 21, 2006 within eight weeks from the date of passing of the order. On such deposit, the appellant no.2 shall receive the entire compensation amount according to the prelevant rules.

Accordingly, 2542 of 2013 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**