**28.11.2023**
**SL No.4**
**Court No. 551**
**Ali**

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

**FMA 1415 of 2022**

**Smt. Chhaya Rani Gorai & Anr.**
**Vs.**
**National Insurance Co. Ltd. & Ors.**

Mr. Jayanta Mukar Mandal
…………… for the appellants-claimants.

Mr. Afroze Alam
…for the respondent No 1- insurance Co.

The instant appeal is preferred against the judgment and Order dated 13th Day of January, 2016 passed by learned Judge, Motor Accident Claims Tribunal, Durgapur, in MAC Case no. 21 of 2014/142 of 2011.

The brief fact of the case is that the present appellant being the claimants preferred an application before the learned tribunal for getting compensation under Section 166 of the M.V. Act 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.

The insurance company contested the matter before the learned tribunal and the learned tribunal after hearing both the parties has allowed the claim case in favour of the claimants and directing the insurance company to pay the compensation amounting to Rs. 18,52,784/-

alongwith interest @ 6% per annum from the date of filing of the claim application. It has been submitted that the claim amount was deposited before the learned tribunal by the insurance company and claimant has already received the same. Now the claimant has preferred this appeal only on the ground that at the time of assessing the compensation the learned tribunal has awarded 10% of the future prospects on the basis of his admitted income. He submits that by virtue of the decision of the Hon'ble Supreme Court passed in **Pranay Sethi.** The claimants are entitled to get the future prospects to the tune of Rs. 40% which would be added to his admitted income. He argued that the learned tribunal has committed error for not awarding the correct future prospects as per observation of the Hon'ble Supreme Court passed in **Pranay Sethi**.

The learned advocate for the respondent/insurance Company submitted that the learned tribunal has awarded the compensation alongwith the some general damages amounting to Rs. 1,00,000/- towards loss of love and affection and more Rs.25,000/- as funeral expenses. The observation of the Hon'ble Apex Court in **Pranay Sethi** which was pressed heard by the learned advocate for the appellants/claimants directed the claim tribunal to pay the general damages amounting to Rs. 70,000/- only. In this case, the learned tribunal has erroneously awarded Rs. 1,25,000/- towards the general damages so in this case the general damages has to be restricted to Rs. 70,000/-

Heard the learned advocates it appears that truly the ground for enhancement of future prospects by the appellant is meritorious at the same time of the argument of the learned advocate for the insurance company cannot be wiped out. The only question appears in my mind that while a direction of Hon'ble Supreme Court is followed in a judgment then why the other portion of the judgment should be disregard. If I allow the claimant to get the compensation on the basis of 40% future prospects according to the direction of Hon'nble Supreme Court in **Pranay Sethi** then the strict following of such guidelines entitled the claimant only to get Rs.70,000/- towards the general damages. The principle of approbate and reprobate can very well applicable in this case; one cannot blow hot and cold at the same time.

I am of the view that the insurance company may have a good ground to consider but at the same time it appears that the insurance company has not filed any cross appeal or cross appeal and the award has already been satisfied. So, the claim of the insurance company regarding the restriction on general damages cannot be entertained at this stage. Considering the entire aspects the award passed by the learned tribunal is herby modified as hereunder:-

**Calculation of compensation**

1. Yearly Income be assessed as........Rs.1,59,980/-
2. Add: Future Prospect 40% .......... Rs.63,992/-
   Rs.2,23,972/-
3. Less: 1/2
   towards personal & living expenses ....Rs.1,11,986/-
4. Multiplier 18
   (Rs.1,11,986 X 18)...................................Rs.20,15,748/
5. Add: General Damages
   (Love and Affection & Funeral Exp).... Rs. 1,25,000/-

**Compensation.......... Rs. 21,40,748/-**

The compensation comes to Rs. 21,40,748/-

The claimant has already received Rs. 18,52,784/-. The balance amount comes to Rs. 2,87,964/-.

The insurance company is directed to pay the balance 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 claimants are entitled to receive the said amount according to prevalent rules subject to ascertainment of payment of requisite court fees.

The instant FMA 1415 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.)**