

20.11. 2023
item No.5
n.b.
ct. no. 551

FMAT 1178 of 2015
with
IA No. CAN 1 of 2022

Smt. Raj Kishori Minj & Ors.
Vs.
Kalipada Samanta

Mr. Purna Chandra Maiti,
.....for the appellants.
Mr. Rajesh Singh,
.... For the respondent.

The instant appeal has been preferred against the judgment and award dated May 25, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Purba Medinipur, at Tamluk, in M.A. C. case No. 216 of 2013.

The brief fact of the case is that the present appellant being the claimant has filed one application under Section 166 of M.V. Act before the learned Tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of offending vehicle duly insured under the policy of the Insurance Company. The Insurance Company contested the matter before the learned Tribunal.

The learned Tribunal after hearing the parties and after receiving the evidence, has allowed the claim case and directed the Insurance Company to pay the compensation amounting to Rs.46,70,429/-. The present appellants have preferred this appeal only on the ground

that the learned Tribunal has not considered the future prospects of the deceased/victim in awarding the compensation.

Learned advocate for the appellant submits that the deceased was a railway employee and was a Senior Engineer of India Railway. The learned Tribunal should have awarded the compensation by considering the future prospects of the deceased. He further argued by virtue of the decision of the Hon'ble Supreme Court passed in **Pranay Shetty**, the present claimants/ appellants are entitled to get the future prospects which would add 25% of established income. Learned advocate for the appellants further argued that the claimants are also entitled to get the general damages of Rs.70,000/- instead of Rs.9,500/- which was already awarded by the learned Tribunal.

Learned advocate appearing on behalf of the Insurance Company raised strong objection and submitted before this Court. The learned Tribunal has considered the argument of the claimants and he denied the future prospects on the ground that nothing evidence was forwarded by the appellants regarding promotion or future prospects of the deceased. So, learned Tribunal correctly denied to pass any compensation on the ground of future prospects. However, learned advocate for the Insurance Company fairly submits that the direction of

Hon'ble Supreme Court passed in **Pranay Shetty** is always applicable in this case.

Heard the learned advocates and perused the materials on record, in considering the impugned judgment, it appears to me that the learned Tribunal has calculated the yearly income of the deceased to be Rs.4,78,044/-. Learned Tribunal has also correctly reduced 1/4th of the same towards his personal expenses considering the family members of the deceased to be four. By virtue of the decision of the Hon'ble Supreme Court in **Pranay Sethi**, it appears to me that the learned Tribunal must have allowed the claim case on the basis of the future prospects which would be 25% of his established income.

The claimants are also entitled to get Rs.70,000/- towards general damages. In considering the entire aspect the award passed by the learned Tribunal need be modified.

So, the just and proper compensation is hereby assessed as follows:

1. Annual income	Rs.4,78,044,-
2. Less 1/3 rd deduction (personal expenses)	<u>Rs.1,19,511/-</u> Rs.3,58,533/-
3. Add 25% future prospect	Rs.4,48,166/-
4. Multiplier "13"	Rs.58,26,158/-
5. Add General Damages	<u>Rs.70,000/-</u>
Total	Rs.58,96,158/-
6. Less awarded by Tribunal and already paid	Rs.46,70,429/-

7. Enhanced Amount Rs.12,25,729/-

According to above calculation enhanced amount of compensation appears to be Rs.12,25,729/-. The enhanced compensation shall be carried interest 6% per annum from the date of filing of the claim application i.e. April 18, 2023.

The learned advocate for the claimants submits that the claimants have already deposited the court fee on the claim amount of Rs.70,00,000/-. However, in considering the submission of the learned advocate; the Insurance Company is directed to pay the enhanced amount of Rs.6% compensation along with interest per annum from the date of filing of the claim application within six weeks from the date of passing of this order.

The Office of the learned Registrar General, High Court, Calcutta shall disburse the amount as deposited by the Insurance Company in the name of the appellants equally subject to ascertainment of payment of requisite court fee if any.

Accordingly, FMAT 1178 of 2015 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.)