31 Ct 237 *rup*

16.03.2023

FMA 1193 of 2012

Smt. Neeraj Niraj Singh & Ors.

Versus
National Insurance Company Ltd. & Anr.

Mr. Krishnu Banik, ... For the appellants

Mr. Rajesh Singh. ... For the respondents

The appeal is directed against the judgment and award passed by learned Motor Accident Claims Tribunal, 5th Court, Howrah in connection with MAC Case No. 287 of 2006, whereby learned Tribunal awarded a sum of Rs.7,62,170/- as compensation.

Feeling aggrieved the instant appeal has been preferred on the ground that learned Tribunal did not consider the income tax return for the assessment year 2004-05, whereas learned Tribunal took average income from the two income tax returns for the assessment year 2004.05 and assessment year for the period from 01.04.2005 to 31.03.2006. That apart the appeal has been preferred also claiming future prospect and general damages of Rs.70,000/- in view of the decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi and Ors.*** reported in ***2017 ACJ 2700.***

It is not disputed that one Shyam Sundar Singh, a man of 37 years, died in an motor accident on 20.02.2006 by the involvement of vehicle bearing No. WB-03/8360 due to rash and negligent driving on NH-6 near Nibra Lalbari under Domjur Police Station. On the relevant date at about 18.45 hours the accident took place due to rash and negligent driving of the offending vehicle and said Shyam Sundar Singh sustained severe injury and succumbed to injuries. The fact of accidental death due to rash and negligent driving of the offending vehicle has been substantiated by the evidence of PW-2 who witnessed the accident and that accident was reported to Domjur P.S where a case No. 38/2006 dated 20.02.2006 under Section 279/338/427/304A I.P.C was started and after investigation charge-sheet was submitted against driver of the said offending vehicle.

In course of evidence, certified copy of the FIR, Charge-sheet, Postmortem Report, Insurance Policy, IT return etc. were admitted in evidence. No specific argument has been advanced before this court on the issue of accidental death of Shyam Sundar Singh by the involvement of the offending vehicle bearing No. WB-03/8360 due to rash and negligent driving.

In course of evidence two I.T returns filed and marked as Exhibit- 10 and Exhibit 10/1. Learned Judge of the Tribunal considered the average income showing in two IT returns as Exhibit 10 and Exhibit-10/1 for the assessment year 2004-05 and assessment year for the period from 01.04.2005 to 31.03.2006.

Mr. Krishnu Banik, learned advocate appearing on behalf of the appellant/claimant assailed the judgment only on the issue of considering average income from two IT returns. According to Mr. Banik, learned Tribunal ought to have considered the income tax return for the assessment year 2004-05 (exhibit 10).

Mr. Rajesh Singh, learned advocate appearing on behalf of the Insurance Company has referred to Exhibit 10/1 showing income of Rs.88999/- for the period from 01.04.2005 to 31.03.2006 which was the income of the deceased prior to his death on 20.02.2006.

I find substance in the argument advanced by Mr. Singh. In assessing compensation it is the duty of the court to consider the income prior to death of the victim. In this case, Exhibit 10/1 clearly shows that Shyam Sundar Singh earned Rs. 88,999/- for the period from 01.04.2005 to 31.03.2006 just prior to his death. Therefore, I do not find any reason to discard the income appearing in income tax return exhibit 10/1.

In the aforesaid view of the matter, I find it necessary to modify the compensation according to income of the deceased as per income tax return for the period from 01.04.2005 to 31.03.2006 as follows:

. Annual Income	*Rs.*	*= Rs.89,000/-*
2. Future Prospect be assessed 25% i.e		*= Rs. 22,250/-*
3. Total		*Rs. 1,11,250/-*
4.1/3 deduction personal (1,11,250-37,083) living expenses		*Rs. 74,167/-/-*

5. Use Multiplier (Rs.74,167 x 14)	*Rs. 10,38,338/-*
6. Add General Damages	*Rs. 70,000/-*
Total	
	Rs. 11,08,338/-
7. Less awarded amount (Already received)	*Rs. 7,62,170/-*
Enhanced amount	*Rs. 3,46,168/-*

It is reported that claimants have already received amount of Rs.7,62,170/-. Now claimants are entitled to enhanced compensation of Rs.3,46,168/- along with interest at the rate of 6% per annum from the date (i.e. 7.8.2006) of filing the claim application till the deposit of the amount.

The claimants are also entitled to 6% interest per annum on the awarded amount of Rs.7,62,170/- from the date (i.e. 7.8.2006) of filing claim application till the deposit of the amount before the Tribunal by the Insurance Company.

Accordingly, National Insurance Company Ltd. is directed to deposit the enhanced amount of Rs.3,46,168/- along with interest of 6% per annum from the date (7.8.2006) of filing of the claim application till the deposit of the amount. Insurance Company is further directed to pay the interest @6% per annum on the awarded amount (by Tribunal) from the date of filing claim petition till the date of deposit of the awarded amount before the Tribunal, subject to adjustment of the amount, if paid, towards interest.

Insurance company is directed to deposit the aforesaid amount before the office of the learned Registrar General within six weeks from date.

Therefore, the claimants are entitled to the amount deposited by the Insurance Company subject to the payment of ad valorem court fees on the amount of Rs.1,08,338/-.

Learned Registrar General is requested to disburse the amount to the claimants along with interest in equal share and proportion as the minor have already attained the age of majority by lapse of time, upon proper identification and proof.

With the aforesaid observation, the **FMA 1193 of 2012** stand disposed of.

Pending applications, if there be any, stand also disposed of.

Let a copy of this order along with Tribunal records shall be transmitted back to the learned Tribunal immediately.

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.)