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05.9.2023
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMAT 11 of 2021

In the Matter of : Maria Goreti Bara & Ors.

Mr. Subir Banerjee ... for the appellants

Ms. Supriya Singh.... for the opposite party.

Heard Mr. Banerjee, learned counsel appearing on behalf of the appellant and Ms. Singh learned counsel representing the National Insurance Co. Ltd.

Challenge in this appeal to the judgment and award dated 11.02.2022 passed by learned Judge Motor Accident Claims Tribunal and Additional District Judge, Jalpaiguri in M.A.C. Case No. 64 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

Briefly stated that on 22.10.2017 at about 8:30 PM one 39 years old, Maria Goreti Bara was dashed by a motor cycle registered as WB-74-K5868 near Jamuna More, P.S. Nagrakata and succumbed to the injuries caused due to such road traffic accident. The legal representatives of this victim filed petition under Section 166 of the Motor Vehicles Act claiming compensation. Learned Judge of Motor Accident Claims Tribunal after taking into consideration the evidence on record was pleased to fix the monthly income of the victim at Rs.6,000/- which comes to Rs. 72,000/- per annum. Learned Tribunal deducted 1/3rd from the said income towards his

personal expenditure and awarded a sum of Rs. 7,72,500/- as compensation.

It is submitted by Mr. Banerjee learned counsel appearing on behalf of the appellants that learned Trial Court did not consider the settled principle of law as laid down by the Hon'ble Apex Court in National Insurance Co. Ltd. vs. ***Pranay Sethi & Ors., reported in (2017) 16 SCC 680*** and did not consider the loss of future prospect, which should have been 40% of the monthly income of the deceased in this case as he was 39 years old which comes around Rs. 2,400/- per month. Learned Tribunal did not consider the general damages to be awarded to the tune of Rs. 70,000/- while passing the judgment impugned learned Tribunal instead awarded Rs. 4,500/-.

Ms. Singh leaned counsel representing the insurer, however, disputes the monthly income of the deceased could not have fixed in absence of any evidence at Rs. 6,000/- per month. Learned Tribunal ought to have fixed notional income @ Rs.5,000/-. It is further adverted that in consonance with the judgment used 16 as a multiplier while according to the judgment of Hon'ble Supreme Court in the case of ***Sarala Verma vs. Delhi Transport, reported in (2003) AIR SC 700*** pronounced in the case of Sarala Verma (supra) correct multiplier ought to have been 15 instead of 16.

Mr. Banerjee, learned counsel for the appellant does not oppose Ms. Singh. However, it I submitted by Mr. Banerjee, and correctly that in absence of any appeal, cross-

appeal, it is to be presumed that insurer has accepted the quantum of monthly income of the victim, so fixed by learned Judge of the Tribunal.

When considered the appeal in the light of the judgement in ***Pranay Sethi (supra)***, I find reason to hold that the impugned judgement warrants interference. The award should be enhanced in the following manner.

The calculation is given below:-

MARIA GORETI BARA & OTHERS

-Versus-

NATIONAL INSURANCE COMPANY LIMITED AND OTHERS

Income per month	Rs. 6,000.00
Add : Future Prospect 40% (Age 39 years)	Rs. 2,400.00
	Rs. 8,400.00
Less : Deduction 1/3 rd	Rs. 2,800.00
Annual Income	Rs. 5,600.00 x 12
Multiplier - 15 (age 39 years)	Rs. 67,200.00 x 15
Add: General Damages	Rs. 10,08,000.00 Rs. 70,000.00
Award of Learned Tribunal	Rs. 10,78,000.00 Rs. 7,72,500.00
	Rs. 3,05,500.00

with Interest @ 6% p.a. from

date of filing of claim application

i.e on 05.02.2018 till the date of payment.

The award granted by the learned MACC to the tune of Rs. 7,72,500/- is enhanced to Rs.10,78,000/- .

It is submitted by Mr. Banerjee that the appellants are entitled to interest @ 6% per annum. The said rate of interest should also be awarded in respect of the enhanced amount of Rs.3,05,500/- from the date of filing of the application till the payment is made.

Ms. Singh submits that rate of interest may be given from the date of filing of appeal but I do not find any reason to accede to the submission made by Ms. Singh.

Since the widow of the victim has not been given the share of compensation, by the learned Tribunal this enhanced amount together with interest shall be given to the widow of appellant no.1.

The insurer shall transfer the awarded amount to the bank account of the appellant no.1 Maria Goreti Bara through NEFT.

The bank manager shall keep the money in the form of Fixed Deposit in the name of Maria Goreti Bara. Under no circumstances the account shall be in the joint name.

The appeal, is thus, disposed of.

Let a copy of this order be sent down to the learned Tribunal for information and necessary action.

(Siddhartha Roy Chowdhury, J.)