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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMAT 12 of 2021

In the Matter of : Rojidan Khatoon & 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 is to the judgment and award dated 16.04.2019 passed by learned Judge Motor Accident Claims Tribunal and Additional District Judge, Jalpaiguri in M.A.C. Case No. 233 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

Briefly stated that on 17.5.2018 at about 10:30 AM Jamshed Ali son of Rojidan Khatoon aged about 27 years while proceeding towards Gayerkata by a motor cycle, he was dashed by a Tata Indica Motor Car registered as **WB-72C-2515** near **Sangam Hotel, P.S. – Birpara** 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.6,500/-** which comes to **Rs.**

78,000/- per annum. Learned Tribunal deducted **1/3rd** from the said income towards his personal expenditure and awarded a sum of **Rs. 9,45,500/-** 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 27 years old which comes around **Rs. 2,600/-** 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. **9,500/-**.

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*** correct multiplier ought to have been **17** instead of **18**.

Mr. Banerjee, learned counsel for the appellant does not oppose Ms. Singh. However, it is 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 I consider 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 incorporating future prospect and general damages in the following manner.

The calculation is given below:-

Rojidan Khatoon & Ors.

-Versus-

NATIONAL INSURANCE COMPANY LIMITED AND OTHERS

Income per month	Rs.	6,500.00
Add : Future Prospect 40% (Age 27 years)	Rs.	2,600.00
	Rs.	9,100.00
Less : Deduction 1/3 rd	Rs.	3,034.00
	Rs.	6,600.00
Annual Income		x 12
	Rs.	72,792.00
Multiplier - 17 (age 27 years)		x 17
	Rs.	12,37,464.00
Add: General Damages	Rs.	70,000.00
	Rs.	13,07,464.00
Award of Learned Tribunal	Rs.	9,45,500.00
	Rs.	3,61,964.00

with Interest @ 6% p.a. from

date of filing of claim application

i.e on 11.06.2018 till the date of payment.

The award granted by the learned MACC Tribunal to the tune of **Rs. 9,45,500/-** is enhanced to **Rs.13,07,464/-** .

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.3,61,964/-** 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 1/3rd of the awarded amount to the bank account of each of the appellants through NEFT. Appellants to furnish bank account details to the Respondent within two weeks.

The bank manager shall keep the money awarded to Jasmine Khatoon in the form of Fixed Deposit in the name of Jasmine Khatoon. Under no circumstances the account shall be in the joint name with anyone else, if she is not minor. If she is found to be minor, then mother shall join as natural guardian.

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.)