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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMAT 14 of 2021

In the Matter of : Rajendra Prasad Dabaral @ Prasad & 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 24.04.2019 passed by learned Judge Motor Accident Claims Tribunal and Additional District Judge, Jalpaiguri in M.A.C. Case No. 232 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

Briefly stated that on 17.5.2018 at about 10:30 AM Ms. Rima Biswakarma, while going down the road as a pillion rider towards Gairkata, the motor cycle was dashed by a Tata Indica registered as **WB-72C-2515** near **Sangam Hotel, P.S. – Birpara** she was taken to hospital as she sustained injuries and she 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.5,000/- which comes to **Rs. 60,000/-** per annum. Learned Tribunal deducted **1/4th** from the said income towards his personal expenditure and awarded a sum of **Rs. 6,09,500/-** 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 25% of the monthly income of the deceased in this case as he was 43 years old which comes around **Rs. 1250/-** 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 **14** instead of **15.**

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:-

Rajendra Prasad Dabaral @ Prasad & Ors.
-Versus-
NATIONAL INSURANCE COMPANY LIMITED AND OTHERS

Income per month	Rs.	5000.00
Add : Future Prospect 40%	Rs.	1250.00
(Age 27 years)		
	Rs.	6250.00
Less : Deduction 1/4th	Rs.	1562.50
	Rs.	4687.00
Annual Income		x 12
	Rs.	56,250.00
Multiplier - 14 (age 43 years)		x 14
	Rs.	7,87,500.00
Add: General Damages	Rs.	70,000.00
	Rs.	**8,57,500.00**
Award of Learned Tribunal	Rs.	6,09,500.00
		Rs. 2,48,000.00

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. 6,09,500/-** is enhanced to **Rs.8,57,500/- .**

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.2,48,000/-** 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.

The insurer shall transfer the 1/4th of the awarded amount to the bank accounts of the appellants through NEFT. If the minor daughter is not having an account, the father shall receive the amount, as natural guardian of the minor and deposit the money in the form of Fixed Deposit in the name of Barsha Biswakarma, under no circumstances the account shall be in the joint name.

The appellants shall provide the accounts details to the respondent insurer within 15 days hence.

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.)