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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMA 23 of 2023

In the Matter of : Shanta @ Santa Kumar Roy & Anr.

Mr. Gobinda Saha … for the appellants

Mr. Pashupati Nath …. for the respondents.

Heard Mr. Saha, learned counsel appearing on behalf of the appellants and Mr. Pashupati Nath learned counsel representing the United India Insurance Co. Ltd.

Challenge in this appeal is to the judgment and award dated 03.02.2023 passed by learned Judge Motor Accident Claims Tribunal and Additional District Judge, Jalpaiguri in M.A.C. Case No. 137 of 2020 under Section 166 of the Motor Vehicles Act, 1988.

Briefly stated that on 06.3.2020 at about 22:35 Hrs. one 30 years old, Ujjal Roy was standing on the road side performing patrolling duty, one Truck was dashed registered as WB-65-B-8786 near Ranninagar, P.S. – Kotwali, District Jalpaiguri 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.9,000/-** which comes to **Rs. 1,08,000/-** per annum. Learned

Tribunal deducted **1/3rd** from the said income towards his personal expenditure and awarded a sum of **Rs. 12,22,000/-** as compensation.

It is submitted by Mr. Saha 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 30 years old which comes around Rs. 3,600/- 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. 9,000/- per month.

Ms. Pashupati Nath 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.

Mr. Saha, learned counsel for the appellants does not oppose Mr. Pashupati Nath. However, it is submitted by Mr. Saha 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:-

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1. Annual Income to be assessed as (Rs.9000 X 12)	Rs. 1,08,000.00
2. Future Prospect be assessed 40% i.e. (Pranay Sethi)	Rs. 43.200.00
3. Total Income i.e.	Rs. 1,51,200.00
4. Deduction 1/3 on account of own Personal Living Expenses (1,51,200-50,400/-)	Rs. 1,00,800.00
5. Use of multiplier as per age of 30(1,00,800 x 17)	Rs. 17,13,600.00
6. General damages as per Pranay Setthi Case is Rs.70,000/-	Rs. 70,000.00
7. Total of Rs. the claimant before the death of the victim deceased	Rs. 17,83,600.00
8. Less amount (given by the Ld. Tribunal)	Rs. 12,22,000.00
9. Amount of Compensation	Rs. 5,61,600.00
10. Interest @ 6% p.a. from date of filing of claim application i.e. on 16.06.2020.	

The award granted by the learned MACC Tribunal to the tune of **Rs. 12,22,000/-** is enhanced to **Rs.17,83,600/- .**

It is submitted by Mr. Saha 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.5,61,600/- from the date of filing of the application till the payment is made.

Mr. Pashupati Nath 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 Mr. Pashupati Nath.

The insurer shall transfer 1/2 of the awarded amount to the bank account of each of the appellants through NEFT. Appellants to furnish back account details to the Respondent within two weeks.

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.)