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29.09.2023
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

FMA 5 of 2023

Smt. Ranjana Roy & Ors.
-vs.-
United India Insurance Company Limited & Anr.

Mr. Gobinda Saha,
Mr. Tamal Kumar Sen,
Ms. Priyanka Dey,
Mr. Milan Chandra Laskar,
Ms. Sanghai Chowdhury
…for the Appellant
Mr. Bipul Ranjan Bhattacharjee
…for Insurance Company

This appeal arises out of an award dated April 29, 2022 passed by the Motor Accident Claims Tribunal, Jalpaiguri in M.A.C. Case No. 318 of 2017.

Learned advocate appearing for the appellants submits that the tribunal ought to have assessed a monthly income of the victim as at least Rs. 9,000/- per month since Division Bench of this Court by a judgment reported at 2019 (3) T.A.C. 68 (Cal) [Royal Sundaram Alliance Insurance Co. Ltd. Vs. Sulekha Mondal (Adhikary) & Ors.] considered the monthly income of an unskilled labourer to be Rs. 9,000/- per month. He submits that the victim was the driver-cum-owner of a commercial vehicle (Maxximo Plus).

Learned advocate appearing on behalf of the insurance company opposes the prayer of the appellants. He submits that the income of the victim was not proved before the tribunal.

The claim petition before the tribunal suggested that the income of the victim was Rs. 12,000/- per month. Appellant no. 1, who deposed before the tribunal as P.W. 1., in cross-examination, however, admitted that she had no knowledge about income of the victim. The tribunal held that there was no evidence produced before it relating to the income of the deceased, except for some documents demonstrating payment of monthly installments to the relevant bank (marked as exhibit 'x' for identification). The tribunal, given the absence of evidence regarding the income of the deceased, found it reasonable to presume an income of Rs. 5,000/- per month.

It is evident that there was no dispute with regard to the fact that the deceased was a registered owner of a commercial vehicle engaged in transportation of goods. The documents relating to the payment of monthly installment though were not formally accepted by the tribunal, they indicated that the deceased consistently paid Rs. 10,000/- per month.

In my view, it was unwarranted to apply the income standard of an unskilled labourer in this case. The income of the deceased should have been presumed to be higher. Having regard to the facts, I enhance the award of the tribunal by modifying the assessed income of the deceased to Rs. 8,000/- per month instead of Rs. 5,000/- per month.

Accordingly, the award of the learned tribunal is modified as below.

The monthly income of the deceased was taken to be Rs. 8,000/- per month by the tribunal. Therefore, after adding 40 per cent as future prospect with the annualised income and deducting one-third on account of personal expenses, the figure arrived at is Rs.89,600/-. Therefore, the annual income of the deceased will be Rs. 89,600/- upon which the multiplier of 17 is to be applied and Rs. 70,000/- on account of general damages needs to be added. Therefore, the figure comes to Rs. 5,71,200/-.

The appellants will be entitled to the aforesaid amount together with interest @ 6 per cent per annum as granted by the tribunal from the date of lodging of the case before the tribunal till the actual payment is made.

The appellants acknowledge having received the entire amount awarded by the tribunal.

The insurance company will calculate the balance amount due to the appellants in terms of this order and make over such amount to the appellants in equal share. The payment should be made directly to the bank account of the appellants within 45 days from date.

The bank account details of the appellants should be forwarded by the advocate for the appellants to the advocate for the insurance company within a fortnight from date.

FMA 5 of 2023 is, thus, disposed of.

There will be no order as to costs.

Urgent photostant certified copy of this order, if applied for, be given to the parties, upon compliance of all requisite formalities.

(Kausik Chanda, J.)