21.5. 2024
item No.11
n.b.
ct. no. 25

**FMA 144 of 2023**

**Sanoti Hansda & Ors.**
**Vs.**
**Cholamandalam MS General Insurance Co. Ltd. & Anr.**

Mr. Subhankar Mandal,
.....for the appellants.
Mr. Rajesh Singh,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated September 13, 2022 passed by the learned Tribunal, 2nd Court, Uttar Dinajpur, Raiganj, in M.A.C. case No. 153 of 2018.

The brief fact of the case is that the victim of this case namely, Khatu Murmu @ Khato Murmu along with other persons were travelling in an auto rickshaw on 6.5.2018 towards the Dalkhola on NH 31. When they reached near Nichitpur More under P. S. Dalkhola, a truck bearing Regn. No. JH 12G 7094, which was coming from Siliguri side, being drives in a rash and negligent manner, lost control and dashed the auto rickshaw. By such collusion the victim and other passengers of the auto rickshow suffered severe bodily injury. The present victim was initially admitted at Dalkhola PHC wherefrom he was referred to Siliguri Hospital but he succumbed to his injury on the way to said hospital.

Legal heirs of deceased preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that the incident happened due to sole negligent and rash driving on the part of the driver of the offending vehicle duly insured under the policy of the insurance company. The claim was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.8,00,000/- towards the compensation along with 6% interest per annum from the date of filing of claim application.

The Insurance Company has satisfied the award to the office of the learned Tribunal.

Being aggrieved and dissatisfied with the said award claimants have preferred the instant appeal only on the ground of quantum.

Mr. Mondal, learned advocate appearing on behalf of the claimants submits that the learned Tribunal has wrongly calculated the multiplier of this case. The deceased was 30 years old, according to the provision of law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Shetti** the correct multiplier would be 17.

Mr. Mondal, learned advocate further submits that the learned Tribunal has failed to appreciate the fact that the claimants are entitled to get the future prospect according to the observation of Hon'ble Supreme Court in **Pranay Shetti(Supra).** He submits that the award requires modification and enhancement on those grounds.

Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that the award of the learned Tribunal though not challenged by the Insurance Company but the general damages as awarded by the learned Tribunal is excessive according to the view of the Hon'ble Supreme Court in **Pranay Shetti(Supra)**. He submits that the learned Tribunal has awarded sum of Rs. 1,60,000/- towards the general damages, which should be not more than Rs.77,000/-.

Heard the learned advocates perused the materials on record and the impugned judgment passed by the learned Tribunal. It appears to me that the learned Tribunal has fixed the notional income of the deceased to be Rs.5,000/- per month. It appears from the record that the deceased was 30 years old, so the correct multiplier should be 17 according to the observation of the Hon'ble Supreme Court in **Sarala Verma Vs. Delhi Transport Corp. & Anr.** as well as **Pranay Shetti(Supra).** The learned Tribunal has awarded no amount towards the future prospect. However, according to the view of the Hon'ble Supreme Court in **Pranay Shetti(Supra)** they are entitled to get the future prospect which would be 40% to the established income of the deceased.

It further appears that the learned Tribunal has awarded Rs.10,000/- towards the funeral expenses, Rs.50,000/- towards the loss of consortium and another Rs.1,00,000/- towards the loss of care and guidelines of minor children. It appears to me that according to the observation of the Hon'ble Supreme Court in **Pranay Shetti(supra),** the claimants are only entitled to get the general damages of Rs.15,000/- towards the loss of estate, Rs.15,000/- towards the funeral expenses and Rs.40,000/- towards the loss of consortium. However, general damages may be enhanced Rs.10% as the three years have already been elapsed after pronouncement of the judgment of **Pranay Shetti(supra).** Considering the same, the general damages would be Rs.77,000/-.

According to the above observation, the award passed by the learned Tribunal need be modified. Just the proper compensation is assessed below:

| | |
|---|---|
| 1. Monthly income | Rs.5,000/- |
| 2 Annual income (5000 X 12) | Rs.60,000/- |
| 3. Add 10% Future Prospect | Rs.24,000/- |
| | Rs.84,000/- |
| 4. Less 1/3rd deduction | Rs.28,000/- |
| | Rs.56,000/- |
| 5. Multiplier 17 (56,000 x 17) | Rs.9,52,000/- |
| 6. Add Funeral Exp. | Rs.16,500/- |
| 7. Add Loss of Estate | Rs.16,500/- |
| 8. Add Loss of Consortium | Rs.44,000/- |
| **Total award** | **Rs.10,29,000/-** |

After calculation, the award comes to Rs.10,29,000/-. The claimant has already received award amounting to Rs.8,00,000/-, the balance award comes to Rs.2,29,000/-

The Insurance Company is directed to pay compensation along with 6% interest per annum from the date of filing of the claim application i.e. from 25.3.2019 till the actual payment.

Insurance Company is directed to pay the above mentioned awarded amount to the claimant through the office of Learned Registrar General, High Court, Calcutta within six weeks from the date of passing of the order.

The office of the learned Registrar General, High Court, Calcutta shall disburse the amount in name of the claimants subject to ascertainment of payment of deficit court fees.

Accordingly, FMA 144 of 2023 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**