

04.03.2024
SL No.216
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 389 of 2022

**Smt. Basanti Roy & Ors.
Versus
New India Assurance Co. Ltd. & Ors.**

Mr. Krishanu Banik,
Mr. Tathagata Banik
.....for the appellants/claimants

Mr. Rajesh Singh
....for the respondent/Insurance Co.

The instant appeal has been preferred against the judgment and award dated 9th December, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, FTC, 2nd Court, Paschim Medinipur, in MAC Case No. 31 of 2018.

The brief facts of the case is that the predecessor of the claimant, namely, Tarun Roy on 31.10.2017 at about 5.30 P.M. was sitting in a tea stall at Bhatmara bus stand on NG-60, at the time two vehicles bearing No. WB-39B/0208 (Truck) and WB-39A/4879 (Truck) which were proceedings towards opposite direction in a rash and negligent manner had collided each other near the tea stall and by such collision the truck bearing No. WB-39B/0208 (Truck) dashed the tea stall causing serious injuries to the victim, by such accident the victim received serious bleeding injury and he succumbed to his injuries at the Hospital. The

claimants preferred an application under Section 166 of M.V. Act before the learned tribunal for getting compensation. The insurer of both the vehicles contested the matter by filing respective written statements.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 7,42,000/--together with interest @ 4% per annum from the date of filing of the claim application as compensation and directed the insurer of both the offending vehicles to pay the compensation in 50% equal shares.

Being aggrieved by and dissatisfied with the said award the present appeal has been preferred by the claimants.

Learned advocate, Mr. Banik appearing on behalf of the appellants/claimants submits that the award passed by the learned tribunal is erroneous on the ground that the learned tribunal has not considered the future prospects in awarding the compensation and the learned tribunal also not considered the direction of Hon'ble Apex Court passed in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in its true perspectives. He argued that the claimants are entitled 25% upon the establish income of the deceased towards the future prospects and the claimants are also entitled to get 10% enhancement of the general damages as the award

passed after three years of passing the judgment of Hon'ble Apex Court in ***Pranay Sethi***.

Learned advocate, Mr. Rajesh Singh appearing on behalf of the Insurance Company raised strong objection and submits that the learned tribunal has awarded just and proper compensation after considering all materials on record. The award has already been satisfied by the Insurance Companies and the claimants have already received the award. He further submits that the general damage has been awarded to the tune of Rs. 70,000/-by virtue of the decision of Hon'ble Apex Court in ***Pranay Sethi***. In this case, no further compensation can be awarded.

Mr. Banik further argued that in this case, the amount of interest upon the award as fixed by the learned tribunal is very meager one; in this case, 6% simple interest may be awarded upon the compensation.

Heard the learned advocates perused the materials on record. It is true that by virtue of decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi 2017 (4) TAC 673***, when the deceased was not in a permanent job, the claimants are entitled to get the 25% of establish income of the deceased as future prospects when the deceased was between the age group of 40-50 years. In this case, the deceased was within

the age group of 40-50 years. So, the claimants are entitled to get 25% of future prospects upon the establish income of the deceased. It is further directed of the Hon'ble Apex Court ***Pranay Sethi (supra)*** that the general damages should be enhanced 10% after every three years of passing the judgment of ***Pranay Sethi***. The Hon'ble Apex Court has pronounced the judgment of ***Pranay Sethi*** in the year 2017. The learned tribunal has passed the award in the month of December, 2021. Thus, in this case, the claimants are entitled to 10% extra upon the general damages.

Considering the above observation, the award passed by the learned tribunal requires modification.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Monthly Income	:Rs. 6,000/-
2. Annual Income (Rs.6,000/- X 12)	:Rs.72,000/-
3. Add: Future Prospects @ 25%	:Rs.18,000/- :Rs.90,000/-
4. Less: 1/3 rd deduction (Rs.90,000/--Rs.30,000/-)	:Rs.60,000/-
5. Multiplier 14 (Rs.60,000/- X 14)	:Rs.8,40,000/-
6. Add: General damages	:Rs.77,000/- :Rs. 9,17,000/-
7. Less: Awarded amount	:Rs. 7,42,000/- :Rs.1,75,000/-

After calculation the award comes to Rs. 9,17,000/-. The award which already received by the claimants Rs. 7,42,000/-. So, the balance award comes to Rs.1,75,000/-The insurance company is directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim application i.e. from 17.01.2018. The Insurance Company is further directed to calculate the award and deposited the same through the office of the learned Registrar General, High Court Calcutta within six weeks. On such deposit the claimants are entitled to get the compensation in equal shares. The payment of compensation is subject to ascertainment of payment of deficit Court Fees, if any.

The amount of compensation shall be deposited by the insurer of both the offending vehicles according to the direction of the learned tribunal.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.

The instant **FMA 389 of 2022** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)