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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT 601 of 2019

Surajit Sengupta

-Vs-

The New India Assurance Co. Ltd. & Anr.

For the Appellant/claimants : Mr. Ashique Mondal

For the respondent/Insurance co. : Mr. Sanjay Paul
Ms. Jaita Ghosh

Heard on : 06.08.2024

Judgment on : 06.08.2024

Ananya Bandyopadhyay, J. :-

1. The instant appeal has been filed being aggrieved by the impugned judgment and award dated 12.12.2018 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 2nd Court, South 24 Parganas in M.A.C. Case No. 6 of 2007.
2. The learned advocate for the appellant/claimant has contended that the tribunal has erroneously granted a sum of Rs. 9000/- towards non-pecuniary damages instead of 84000/-. The learned advocate for the appellant/claimant further contended that the notional income of the deceased victim was considered to be Rs. 15,000/- per year which otherwise should have been

considered to be Rs. 3,000/- per month. The learned tribunal further erred in not awarding the future prospect as per the observations of the Hon'ble Supreme Court in the case of *National insurance company Ltd. Vs. Pranay Shetty & Anr*¹. The multiplier was considered to be 16 instead of 18 as per the observation of *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*²

3. On the contrary, learned advocate representing the respondent No.1/insurance company has opposed the claim of the learned advocate for the appellant/claimant stating that the learned tribunal has awarded a sum of Rs. 1,69,000/- along with interest to be paid at the rate of 6 % per annum from the date of the judgment (12.12.2018) till its realization and the same was justified.
4. The accident occurred on 16.01.2007 when the deceased victim was plying a motor cycle bearing registration No. WB-20E/6086 towards Ara Punch along with his wife and mother. The offending Bus bearing Registration No. WB-19/1383 approaching at a high speed from the opposite direction with an intention to overtake one van rickshaw, eventually collided with the petitioner's motor cycle violently. The appellant instantly succumbed to his injuries. Consequent to the aforesaid accident, Sonarpur Police Station Case No. 29/07 dated 16.01.2007 under Section 279/338/304A of the Indian Penal

1 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Code was instituted. Simultaneously, the instant application under Section 166 of the Motor Vehicles Act was filed in the aforesaid tribunal. The occurrence of the accident, driving licence and the insurance policy etc were not disputed. The early notional income of the deceased was held to be Rs. 15,000/- per year as a home-maker as well as being engaged at a beauty parlour. It was claimed that the victim earned a sum of Rs. 3000/- per month which was unsubstantiated through proper evidence. The incident occurred in the year 2007 and notional income of the victim claimed to have been in service at a beauty parlour can be considered to be Rs. 3000/- per month.

5. The learned advocate for the respondent No.1/insurance company did not object to the other components involved in calculating the award amount. The impugned award of Rs. 1,69,000/- is modified as follows:-

Monthly Income	Rs. 3,000/-
Annual Income "12"	X 12

	Rs. 36,000/-
Less Personal expenses (1/3)	- 12000

	Rs. 24,000/-
	+ 9000/-
Future Prospects (40%)	-----
	33,600/-
Multiplier by "18"	X 18

	Rs. 6,04,800/-
Add: Non Pecuniary damages	84,000/-

Entitlement	Rs.6,88,800/-
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6. The appellant/claimant is entitled to receive the awarded amount of Rs. 6,88,800/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
7. The Learned Advocate for the respondent/insurance company is to deposit the balance sum of Rs. 6,88,800/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
8. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present appellant/claimant as mentioned in the impugned judgment dated 12.12.2018 passed by the MAC Tribunal-Cum-Additional District Judge, 2nd Court, Sealdah, South 24 Parganas on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court fees.
9. With the above observation, the instant appeal is disposed of.

10. The interim order if any stand vacated.
11. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)