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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 968 of 2023

Smt. Fulmuni Tudu & Ors.

-Vs-

National Insurance Co. Ltd. & Ors.

For the Appellants/claimants : Mr. Muktokesh Das
Ms. Sonali Bag

For the respondent/insurance co. : Parimal Kr. Pahari

Heard on : 07.08.2024

Judgment on : 13.08.2024

Ananya Bandyopadhyay, J. :-

1. The Learned Advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The Learned Advocate for the appellants/claimants submitted that an application under Section 166 of the Motor Vehicles Act was filed by the appellants/claimants, which gave rise to MAC Case No.305 of 2016. The learned Additional District Judge cum Motor Accident Claims Tribunal, 4th Court, Krishnagar, Naida vide judgment dated 22nd June, 2023 disposed of the aforesaid application under Section 166 of the Motor Vehicles Act, 1988 after

disposing of the issues framed and appreciating the evidence on record.

3. The learned advocate for the appellants/claimants submitted that the learned Tribunal erroneously held that the notional income to be Rs.3,000/- instead of Rs.5,000/- disregarding the price index on the date of accident.
4. The learned advocate for the respondent/insurance company submitted that the learned Tribunal had correctly assessed the compensation amount considering the notional income to be Rs.3,000/- per month and the other components to be evaluated for the purpose of computation of the compensation.
5. The occurrence of the accident, the involvement of the offending vehicle, the insurance policy etc. were not disputed. Indubitably, the driving licence of the victim to be a truck driver could not be produced before the Court to establish his avocation being truck driver. The deposition of the PW 3 reveals the victim to have been the driver of a lorry belonging to him. However, he could not produce any document in support of his claim to be owner of the truck. However, considering the price index in the year 2016, the monthly of the income is to be considered as of Rs.5,000/- per month.

6. Considering the observations of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr*¹ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr*.², the impugned award of Rs. 6,74,800/- is modified as follows:-

Monthly Income	Rs. 5,000/-
	x 12
Annual Income	-----
	Rs. 60,000/-
Add Future Prospect 40%	
	Rs. 24,000/-
Deduction ¼	-----
	Rs. 84,000/-
	Rs.21,000/-

	Rs. 63,000/-
Multiplier by "16"	
	X 16

	Rs.10,08,000/-
	Rs. 84,000/-

Add: General Damages to be added (Rs.70,000)	Rs. 10,92,000/-
Less: Principal Award Received	Rs. 6,74,800/-

	Rs. 4,17,200/-
Entitlement	
	Rs.4,17,200/-

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

² (2009) 6 SC 121

7. It was further submitted by both the learned advocates as aforesaid that the appellants/claimants had already received a sum of Rs. 6,74,800/- without any interest. Accordingly, the appellants/claimants are entitled to receive the balance amount of Rs. 4,17,200/- along with interest at the rate of 6% per cent per annum of Rs.10,92,000/- from the date of filing of the claim application till the date of actual realization.
8. The Learned Advocate for the respondent/insurance company is to deposit the balance sum of Rs. 4,17,200/- 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.
9. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award granted by the learned Additional District Judge and Motor Accident Claims Tribunal, 4th Court, Krishnagar, Naida in MAC Case No.305 of 2016 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

10. The instant appeal is disposed of accordingly.
11. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)