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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1150 of 2024

Cholamandalam MS General Insurance Co. Ltd.
-Vs-
Kamala Das & Ors..

For the appellant/insurance co.	:	Mr. Rajesh Singh
For the respondents/claimants	**:**	Mr. Jayanta Kumar Mandal Mr. Sayantan Rakshit
Heard on	**:**	20.09.2024
Judgment on	**:**	20.09.2024

Ananya Bandyopadhyay, J. :-

1. The learned advocates for the appellant/insurance company as well as respondents/claimants are present.
2. The instant appeal has been filed against the judgment dated 27th April, 2022 passed by the Learned Judge, MAC Tribunal, Fast Track, 4th Court, at Barasat, North 24 Pargans in MAC Case No.844 of 2015.
3. The victim aged about 63 years died out of an accident which occurred on 18th November, 2015 at about 4.00 a.m. near Jirat Power Station on National Highway-34 on the road which fell

under the jurisdiction of Amdanga Police Station, District- North 24-Parganas. The victim eventually succumbed to his injuries and expired subsequently.

4. The learned advocate for the appellant/insurance company submitted that the learned Tribunal erred in computing the monthly income of the victim to the extent of the pension received by him to the tune of Rs.12,325/- per month though he did not dispute any other elements regarding future prospect, multiplier, general damages etc.

5. The learned advocate for the respondents/claimants relied upon the decisions of the Hon'ble Supreme Court in 2013(3) TAC 529 (Cal) [Binapani Ghosh & Ors. v. New India Assurance Co. Ltd. & Anr.] and 2014 (3) TAC 200 (Cal) [ICICI Lombard General Insurance Co. Ltd. v. Smt. Sipra Das @ Shipra Das & Ors.).

   In the aforesaid judgments Paragraphs No. 21 to 26 as well as paragraph Nos.4 to 12 are quoted below:

21. "We thus propose to recalculate the compensation amount by taking into account the actual loss of dependency of the claimants with reference to the amount of money which the deceased used to contribute to his family during his life time.

22. The victim admittedly used to earn a sum of Rs. 4,844/- on account of pension. If 1/3rd is deducted from his total income on account of his personal and living expenses from such pension amount, then the actual loss of dependency of the claimants will be Rs.3,230 per month. If the said loss of dependency of the claimants of Rs. 3,230/- is multiplied by 12, then the annual loss of dependency of the claimants will be RS. 38,760/-

23. Considering the age of the deceased at the time of his death as 60 years, we propose to apply the multiplier of 5 in the instant case, thus, if the annual loss of dependency of Rs. 38,760/- is multiplied by 5, then the actual loss of dependency of the *claimants will be Rs. 1,93,800/-. We further hold that in addition to the said sum of Rs. 1,93,800/- the claimants are also entitled to get a further sum of Rs. 9,500/- on account of statutory compensation. Thus, if the said sum of Rs. 9500/- is added to the said sum of Rs. 1,93,800/- then the total compensation payable to the claimants/appellants will be Rs. 2,03,300/-.*

24. Admittedly, the claimants have already received a sum of RS. 1,06,380/- in pursuance of the direction passed in the impugned award.

25. Accordingly, we direct the Insurance Company to pay the balance amount of compensation amounting to Rs. 96,920/- to the claimants/appellants together with simple interest @ 6% per annum on the entire compensation amount from the date of presentation of the claim-petition before the Tribunal (i.e. on 13th April, 2006) up to the date of actual payment thereof. Such payment should be made to the claimants/appellants in equal share within thirty days from the date of communication of this order by following the same mode of payment as prescribed in the impugned award.

26. We further make it clear that the payment as per the direction of this Court will be made by the Insurance Company to the claimants by Account Payee Cheques to be deposited in the Tribunal.

4. The Insurance Company contended that the first respondent getting family pension on the death of her husband was not entitled to any compensation. On the other hand, the first respondent contended that neither the receipt of family pension took away her right to claim compensation, nor was the amount to be deducted from the amount of compensation found payable.

12. This being the position, we are of the considered opinion that the laid down by the Supreme Court in Helen should apply to the case; and that the claims Tribunal rightly applied the principle to the case. The claims Tribunal was fully justified in rejecting the appellant's contention. The family pension amount the first respondent was receiving was not to be deducted from the amount of compensation as well. We, therefore, do not find any merit in the only issue involved in the appeal".

In view of the aforementioned observations, it is opined that the learned Tribunal has rightly and justly assessed the compensation amount and this Court is not inclined to interfere with the same.

The learned advocate for the appellant/insurance company submitted to have deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 10,82,851/- as per the challan filed by the learned advocate for the appellant/insurance company.

The office of the Registrar General, High Court at Calcutta is to deduct the entire amount inclusive of the awarded amount as aforesaid along with an interest of 6 % per annum on the same from the date of filing of the claim application till the date of realization, from the deposited amount in this Court vide the O.D. Challan No. 3231 dated 02.01.2024 and refund the balance amount through a cheque to the learned advocate for the respondents/claimants subject to payment of ad valorem Court fees.

The interest generated on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which was further deposited in the nationalized bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the respondents/claimants.

The instant appeal is disposed of accordingly.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)