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Calcutta High Court
In the Circuit Bench at Jalpaiguri

FMA 12 of 2024

Smt. Sunita Singh & Ors.
Vs.
Nikhil Chandra Das & Anr.

Mr. Uday Sankar Sarkar ...for the Appellants

Mr. Bipul Ranjan Bhattacharjee
...for the Respondents

This appeal has been preferred against the judgment and award dated 4th November, 2022 passed by M.A.C Tribunal, (4th Court), Jalpaiguri in MAC case no. 26 of 2021 under Section 166 of the Motor Vehicles Act, 1988. The appellants herein have challenged the impugned order mainly on four grounds:

i) The tribunal below has wrongly assessed income of the victim as Rs. 6000/- per month instead of Rs. 9000/- per month, though there is no dispute that the victim was a driver by profession.

ii) The tribunal below has wrongly deducted 1/3 of the amount towards personal expenses though there is no dispute that the victim died leaving behind his wife, two minor sons, father and his mother. Accordingly, the deduction ought to have been made 1/4 towards personal expenses.

iii) The tribunal below has not wrongly awarded future prospect @ 40% which the claimants legally entitled to get.

iv) The tribunal below has awarded interest @ 5% per annum from the date of filing of the application instead of higher interest as prevailing at the relevant point of time.

So far as the victim's income at the time of accident is concerned, it appears from the claimant's application in column no. 4, that the victim was a driver of the Pick-up Van bearing Regn. No. WB-73-D-6963 and it has further been pointed out that the victim's driving licence was seized during investigation.

Learned counsel for the insurance company also did not dispute that the victim was a driver by profession and at the time of accident, he was driving the victim vehicle.

In such view of the matter, relying upon Apex court judgment in **R. Ravi Vs. the United Insurance Company Ltd. (arising out of SLP(C)**

no. 9026 of 2020, decided on 26th April, 2024, I am of the view that being a driver of a pick up van, victim at least used to earn Rs. 300/- per day which amounts to Rs. 9000/- per month and accordingly, the court below was not justified in assessing the victim's income as Rs. 6000/- instead of Rs. 9000/- per month.

As regards, deduction of 1/3 amount from the victim's income towards personal living expenses, it appears that in column no. 20, it has been stated that the victim died leaving behind his wife, minor son, minor daughter, mother and his father who are applicant nos. 1 to 5. Since the number of dependents were more than three, the court below was not justified in deducting 1/3rd amount towards personal living expenses and the deduction ought to have been made 1/4th amount from the victim's personal expenses.

As regards, future prospect it is settled law in view of **Pranay Sethi's judgment** reported in **(2017) SCC online SC 1270** that the claimants are entitled to get 40% towards future prospect since victim was a self-employed per son and died at the age of 32 years. In this context, learned counsel for the insurance company also did not raise any objection.

So far as, awarding compensation amount is concerned, it appears that the tribunal below has awarded interest @ 5% per annum. Section 171 of the Motor Vehicles Act prescribes that the court may award simple interest upon the compensation amount. In **Abati Bezbarkah Vs. Dy. Director General, Geological Survey of India and another reported in (2003) 3 SCC 148**, it was held that award of interest would normally depend upon the bank rate prevailing at the relevant time. In the present case, accident took place on 22.4.2017. Considering the bank's fixed deposit interest rate prevailing from 2017-18 onwards, I find that the tribunal below has not committed any mistake in awarding 5% interest to the compensation amount.

In view of aforesaid discussion, the compensation amount is modified to the following extent:-

Annual income of the victim 9000x12	= Rs. 1,08,000/-
Apply multiplier 16	= Rs. 17, 28,000/-
Less 1/4th of the amount for personal living Expenses (17,28,000 – 4,32,000)	= Rs.12,96,000/-
Future prospect @ 40%	= Rs. 5,18,400/-
Add funeral expenses	= Rs. 15,000/-
Add loss of estate	= Rs. 15,000/-
Add loss of consortium	= Rs. 40,000/-
Total Compensation	= Rs. 18,44,400/-
Compensation received	= Rs. 8,38,000/-
Due Compensation	= Rs. 10,46,400/-

Accordingly, the insurance company is directed to pay due compensation amount of Rs. 10,46,400/- along with 5% interest per annum from the date of filing of the claim application within a period of three months from the date of communication of the order, in the mode and manner as indicated by Tribunal below in the impugned judgment.

FMA 12 of 2024 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)