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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

FMA 51 of 2024

Nilima Dutta & ors.

-VS-

Iffco-tokio General Insurance Co. Ltd. & anr.

Mr. Gobinda Saha

Mr. Tamal Kr. Sen

Mr. Milan Ch. Laskar

Ms. Priyanka Dey

... for the appellants-claimants

Mr. Pawan Gurung

Mr. Abhisek Palit

... for the respondent no.1–Insurance Co.

This appeal is preferred against the judgment and award dated 29th August, 2024 passed by learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, Fast Track 1st Court, Jalpaiguri in M.A.C. Case No.311 of 2020 granting compensation of Rs.37,62,880/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

With the consent of the parties, preparation of paper book is dispensed with.

The brief fact of the case is that on 17th August, 2020 at about 5:30 p.m. while the victim, Sujay Dutta was returning back to his residence from the side of Maynaguri at that time near Tekatuli under Police Station Maynaguri, the offending vehicle bearing

registration No.WB-73F-1754 coming at a high speed from the side of Dhupguri and in rash and negligent manner dashed the victim. As a result of such accident, the victim sustained severe injuries on his person. Immediately, the victim was taken to Maynaguri Hospital where he succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow, son and daughter of the deceased filed application for grant of compensation to the tune of Rs.37,79,440/-together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claim case was keenly contested by the respondent no.1-Insurance Company by filing written statement.

Respondent no.2-owner of the offending vehicle although appeared before the learned Tribunal but did not file his written statement and the case was proceeded *ex parte* against him. In the aforesaid backdrop, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, is dispensed with.

The claimants in order to establish their case examined two witnesses including claimant no.1 and produced documents, which have been marked as **Exhibits 1 to 14**, respectively.

The respondent no.1-Insurance Company did not adduce any evidence in support of its case.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.37,62,880/- in favour of the claimants under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Gobinda Saha, learned Advocate appearing for the appellants-claimants submits that the learned Tribunal failed to grant interest on the compensation amount and the interest is granted as default clause. He submits that the claimants are also entitled to escalation of 20% on the general damages. To buttress his contentions, he relies on the decision of the Hon'ble Supreme Court passed in the case of ***National Insurance Company Limited -versus- Pranay Sethi and Ors.***, reported in ***2017 ACJ 2700***.

Mr. Pawan Gurung, learned Advocate appearing on behalf of the respondent no.1-Insurance Company opposes such prayer for enhancement.

Having heard the learned Advocates for the respective parties, the following issues have fallen for consideration.

- (i) whether the claimants are entitled to interest on the compensation amount? and

- (ii) whether the claimants are entitled to escalation of 20% on the general damages?

With regard to first issue of entitlement of interest on the compensation amount it is found that the learned Tribunal has granted interest as a default clause. Be that as it may, in view of provisions under Section 171 of the Motor Vehicles Act, the claimants are entitled to interest @ 6% per annum from the date of filing of claim application till realization.

With regard to second issue regarding 20% escalation on general damages, it is found since 7 years have elapsed from the date of passing of the judgment of Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to 20% escalation on the general damages.

Thus, the compensation is calculated to the tune of Rs.37,62,880 + Rs.14,000/- = Rs.37,76,880/-.

It is informed by the learned Advocate for the appellants-claimants that the claimants have already received Rs.37,62,880/- as the amount of compensation granted by the learned Tribunal.

Accordingly, the Insurance Company is directed to deposit the balance amount of compensation, that is, 20% escalation on general damages (Rs.14,000/-) together with interest on the entire amount of compensation @ 6% per annum from the date of filing of the claim application till deposit, by way of a cheque

before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri within a period of six weeks from date.

Upon deposit of the balance amount and interest @ 6% per annum from the date of filing of the claim application till deposit of the amount of balance compensation as indicated above, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall disburse the amount in favour of the appellants-claimants, after payment of Rs.8,000/ as spousal consortium to the appellant no.1-widow of the victim, in equal share, subject to satisfaction of their identity.

With the aforesaid observations, the appeal being **FMA 51 of 2024** stands allowed. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Let the trial court records be sent to the learned Tribunal in accordance with the rules.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)