

1 24.7.19
gc Ct. No. 1

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

FMA 8 of 2019

**Alema Bibi
-Versus-
The New India Assurance Company Ltd. & Anr.**

Mr. Gobinda Saha,

....for the Appellant.

Mr. Rishin Chakraborty,

...for the Respondents.

An affidavit of service filed by the appellant in Court is kept with the record.

Assessment of Compensation produced on behalf of the appellant is kept with the record.

Vakalatnama filed by the respondents in Court is kept with record.

By consent of the parties, the appeal is taken up for hearing and disposed of by this judgment.

The appellant is aggrieved by a judgment and order passed by the Motor Accident Claim Cases Tribunal FTC 1st Court, Jalpaiguri to the extent the said Tribunal has failed to follow the law laid down by the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi & Ors.* reported at (2017) 16 SCC 680 and a subsequent decision of the Hon'ble Supreme Court in *Munusamy & Ors. Vs. Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd.*

reported at (2018) 2 SCC 765.

It is submitted that the Tribunal has failed to take notice of the guidelines laid down in the said decision and in computing the compensation payable to the appellant, the Tribunal has not followed the formula to be applied in the given facts and circumstances of the case.

The learned Counsel for the appellant has produced before us the Assessment of Compensation following the judgments of the Hon'ble Supreme Court mentioned above. A copy of the said calculation has also been handed over to the learned Counsel appearing on behalf of the Insurance Company. The Assessment of Compensation as assessed by the appellant is as follows:-

1. *Monthly Income of the victim/deceased be assessed as Rs.3000/- and therefore annual income of the deceased would be Rs.36,000/- (Rs.3,000/- X 12)* **Rs.36,000/-**

2. *Deduction of 1/3rd on personal living expenses if the deceased would have been alive and hence after deduction it would be Rs.24,000/-* **Rs.24,000/-**

3. *Multiplier be used as per Tribunal by considering the age of the deceased (below 40 years) as 15*

4. *Loss of dependency (Rs.24,000 X 15)* **Rs.3,60,000/-**

5. *Future prospect of the victim/deceased as 40% following the ratio/principle laid down by the Hon'ble Apex Court of India in the case of National Insurance Vs. Pranay Setthi (40% of Rs.3,60,000/-)* **Rs.1,44,000/-**

6. *General damages as per Pranay Setthi case is Rs.70,000/- (Rs.15,000/- for loss of estate, Rs.15,000/- for*

funeral expenses, Rs.40,000/- for loss of consortium)

Rs.70,000/-

*7. Medical expenses of Rs.40,000/- as incurred by the claimant before the death of the victim deceased **Rs.40,000/-***

Total = Rs.6,74,000/-

8. Interest @ 8% from the date of the filing of the claim application i.e. 05.04.2017 [aforesaid interest on the awarded amount of Rs.3,69,500/- from the date of filing of claim application plus balance Rs.2,44,500/- @ 8% from the date of filing of the claim application till the date of realization]

Rs.6,14,000/-

The learned Counsel for the Insurance Company has raised objections to the Assessment of Compensation. It is submitted that the law laid down by the Hon'ble Supreme Court in **Pranay Sethi** (supra) is a decision rendered under Article 142 of the Constitution of India. Moreover, there had been no laches on the part of the Insurance Company in processing the claim and making the payment and, as such, interest at the rate of 8% per annum from the date of filing of the claim petition may be disallowed.

We are not in agreement with the submission made on behalf of the Insurance Company. The law laid down in **Pranay Sethi** (supra) is binding on all Courts and we hold that the Assessment of Compensation made by

the appellant is in consonance with the guidelines laid down in **Pranay Sethi** (supra) which is binding on us.

The claims made in Serial Nos. 1 to 6 of the Assessment of Compensation are accepted. However, we reduce the claim on account of medical expenses from Rs.40,000/- to Rs.20,000/-. In view thereof, there shall now be an award for a sum of Rs.6,54,000/-.

The New India Assurance Company is directed to pay the said sum of Rs.6,54,000/- to the petitioner on proper identification by way of account payee cheque within four weeks from the date of this order after adjustment of any amount if paid in the meantime in terms of the award, in default, the claimant-petitioner shall be entitled to interest at the rate of 9% per annum on the above awarded amount or the balance amount payable on adjustment from the date of filing of this case till its actual realization.

The appeal being FMA 8 of 2019 stands disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Ravi Krishan Kapur, J.)

