

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

FMA 928 of 2004

IA No. CAN 1 of 2004 (Old No. CAN 9854 of 2004)

IA No. CAN 3 of 2008 (Old No. CAN 2380 of 2008)

1. <u>Sri. Gunadhar Mondal</u>	
2. <u>Ms. Sulekha Mondal</u>	Appellants/Claimants
<u>Vs</u>	
1. <u>Oriental Insurance Company Ltd.</u>	
2. <u>The New India Assurance Company Ltd.</u>	
3. <u>Sri Bamandev Halder</u>	
4. <u>Sri Sukanta Bangal</u>	 Respondents

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Mr. Krishanu Banik, Adv.

..... for the Appellants

Ms. Sucharita Paul, Adv.

.....for the Respondent No.1

Mr. Rajesh Singh, Adv.

..... for the Respondent No. 2

Heard On : 30.06.2022

Judgment on : 14.07.2022

Rabindranath Samanta, J:-

1. Being aggrieved by the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 8th Court, Alipore, South 24 Parganas vide judgment dated 25.06.2004 in M.A.C. Case No. 265 of 2000 the claimant Smt. Arati Mondal, wife of Gunadhar Mondal, appellant No.1 herein, preferred the instant appeal. During the pendency of the

appeal the sole appellant/claimant Arati Mondal died and in her place her husband namely Gunadhar Mondal and her daughter namely Sulekha Mondal were substituted in her place by order dated 02.07.2007 passed by a Division Bench of this Court.

2. The claimant Arati Mondal initially filed the claim application under Section 163A of the Motor Vehicles Act. Subsequently, on her application for amendment, the claim case was converted to a case under Section 166 of the Motor Vehicles Act from the case under Section 163A of the Act vide order dated 23rd June, 2003 passed by the learned Tribunal.
3. To put succinctly, the facts of the claim application as brought by the claimant Arati Mondal may be stated as under:

On 28.04.2000 at about 3:45 P.M. Gopal Mondal, the son of the claimant Arati Mondal being the driver of a bus bearing No. WB-19/6287 on route No. SD-8 was proceeding from the Thakurpukur bus stoppage with a destination to go to Bibirhut bus stand. While the bus reached near Nandabhanga-Ghosh pukur bus stoppage, then a bus bearing No. WB-19/6703 on route No. SD-22 was proceeding from the opposite direction rashly and in negligent manner endangering to human life dashed against the driver's cabin of Gopal Mondal. As a result, he sustained severe chest injuries. Blood came out from his face and he was taken to Samaly Primary Health Centre. After some first aid was given to him, he was referred to M.R. Bangur Hospital where he succumbed to the injuries.

4. It was alleged by the claimant that the driver of the offending bus bearing No. WB-19/6703 was responsible for the accidental death of the claimant's son. The victim Gopal Mondal died at the age of 24 years. He was the only son of the claimant. The victim used to earn Rs. 6,000/- per month.

5. On the allegations of rash and negligent driving on the part of the driver of the offending vehicle an FIR was lodged at Bishnupur Police Station which was registered as Bishnupur P.S Case No. 106 dated 28.04.2000 under Sections 279/338/427/304A of the Indian Penal Code.
6. At the time of the accident the offending bus bearing No. WB-19/6703 was registered with the Oriental Insurance Company Limited and the non-offending bus bearing No. WB-19/6287 driven by the victim was insured with the New India Assurance Company Limited.
7. The victim used to earn Rs.6,000/- per month as a driver of the aforesaid non-offending bus.
8. Under the aforesaid facts, the claimant sought for compensation.
9. The respondent No.1 Oriental Insurance Company Limited contested the claim application by filing a written statement wherein it denied the averments/allegations as made by the claimant in the claim application and sought for dismissal of the case with costs.
10. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:
 - i) Is the case maintainable in its present form ?
 - ii) Whether the alleged accident took place due to rash and negligent driving of the driver of the offending vehicle bearing No. WB-19/6703 (bus) ?
 - iii) Whether the offending vehicle was covered by Insurance at the time of accident ?
 - iv) Is the claimant entitled to get the award as prayed for ?
 - v) To what other relief/reliefs the claimant is entitled ?
11. From the case records of the learned Tribunal, it appears that the claimant in order to prove her case examined as many as three witnesses. The documents filed by the claimant were marked as Exhibited documents. However, no oral or documentary evidence was adduced from the side of the Insurance Company.

12. Upon hearing the learned Advocates appearing for the parties and on consideration of the oral and documentary evidence the learned Tribunal after disposing of the issues as above passed the award directing the Oriental Insurance Company Limited, the respondent No.1 herein to pay an amount of Rs.3,00,000/- to the claimant within 30 days from date, failing which penal interest at the rate of 9% per annum shall be charged till realisation of the awarded amount.
13. Admittedly, at the time of the accident, the offending bus bearing No. WB-19/6703 was insured with the respondent No.1, the Oriental Insurance Company Limited. As held by the learned Tribunal on assessment of the evidence of the eye-witness (P.W.2) Sripati Mondal, the driver of the offending bus was responsible for causing the accident due to his rash and negligent driving. However, on analysing the evidence of P.W. 2 I find that the eye-witness Sripati Mondal unequivocally testified that due to rash and negligent driving on the part of the driver of the offending vehicle, the offending vehicle dashed against the victim who was driving the bus bearing No. WB-19/6287. He also testified that because of such accident the victim sustained injuries on his vital organ of the body and he succumbed to the injuries. Be that as it may, no cross-appeal has been preferred by the respondent No.1 to challenge the findings of the learned Tribunal in this regard. Therefore, it stands proved that due to rash and negligent driving on the part of the offending bus the victim met with the accident and he lost his life.
14. From the evidence on record it appears that the victim died at the age of 24 years. From an unchallenged documentary evidence (salary certificate) it appears that the victim used to earn Rs. 6,000/- per month. That being so, the learned Tribunal rightly held that the monthly income of the victim was Rs. 6,000/-.

15. A reading of the judgment of the learned Tribunal shows that the learned Tribunal selected the multiplier 6 on calculation of the average age of his parents.
16. Learned lawyer appearing for the appellants submits that adopting multiplier as 6 by the learned Tribunal is erroneous in view of the decision in the case of **Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors** reported in **(2009) 6 SCC 121** and **National Insurance Company Limited -Vs- Pranay Sethi and Ors** reported in **(2017) 16 SCC 680**. Learned lawyer submits that the learned Tribunal did not award any compensation considering the future prospects of the deceased. Besides, awarding compensation of Rs.12,000/- on the grounds of pain and suffering of the mother of the victim and on funeral expenses is also erroneous in view of the aforesaid two decisions.
17. However, learned lawyer appearing for the Insurance Company opposes the submission as advanced by the learned lawyer for the appellants.
18. As held above, the victim Gopal Mondal died at the age of 24 years.
19. The Hon'ble Apex Court in the decision in the case of **National Insurance Company Limited -Vs- Pranay Sethi and Ors** reported in **(2017) 16 SCC 680** has held that the age of the deceased whether died unmarried or married will be the basis for applying multiplier. In terms of paragraph 42 of the decision in the case of **Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors** reported in **(2009) 6 SCC 121** multiplier 18 will be adopted for the age groups of 15 to 20 and 21 to 25 years.
20. In the decision in the case of **Pranay Sethi** supra, the Hon'ble Apex Court at paragraph 59.4 has observed that if the victim was on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Therefore, 40% would be added to the compensation. It has been held by the

Hon'ble Apex Court in ***Pranay Sethi*** (supra) that if the victim died unmarried 50% deduction would be made towards his personal and living expenses. If the aforesaid multiplier is adopted and the guidelines of the Hon'ble Apex Court are taken into consideration, the computation of the compensation would be in the following manner:

1) Monthly Income to be assessed=	Rs. 6,000/-
2) Annual Income to be assessed=	Rs. 72,000/-
(Rs.6000 x 12)	
3) Future Prospects to be assessed at the =	Rs. 28,800/-
Rate of 40%	
4) Total=	Rs. 1,00,800/-
5) 50% deduction on the death of the=	Rs. 50,400/-
victim as unmarried on account of	
his personal and living expenses	
(Rs.1,00,800 – Rs.50,400)	
6) Multiplier 18 will be adopted as per=	Rs. 9,07,200/-
the age of the victim	
(Rs.50,400 x 18)	
7) General damages admissible to the =	Rs.30,000/-
mother of the deceased	
(Rs.15,000 for loss of estate and Rs.15,000	
for funeral expenses)	
8) Total=	Rs.9,37,200/-
9) Less the awarded amount already paid=	Rs.3,00,000/-
by the Insurance Company	
 Total Balance Amount =	 Rs. 6,37,200/-

21. In view of the above, the award passed by the learned Tribunal requires modification.

22. On modification of the award passed by the learned Tribunal the respondent No.1 Oritenal Insurance Company Limited is directed to pay compensation of Rs.6,37,200/- to the claimants, the legal heirs of the deceased claimant. The respondent No.1 is directed to pay interest at the rate of 6% per annum on the amount of Rs.3,00,000/- as awarded by the learned Tribunal from the date of filing of the claim application on 27.06.2000 till this amount was deposited by the Insurance Company. The respondent No.1 is further directed to pay interest at the rate of 6% on the further awarded amount of Rs.6,37,200/- from the date of filing of the claim application.
23. The respondent No.1 is directed to deposit the awarded amount of Rs.6,37,200/- and 6% interest as indicated above by cheque with the learned Registrar General, High Court, Calcutta within five weeks from date. After the aforesaid amount of money is deposited, the learned Registrar General shall release the amount to the claimants in equal share as expeditiously as possible.
24. With the aforesaid direction the appeal and the connected application, if any, stand disposed of.
25. No order as to costs.
26. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.
27. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)