

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

PRESENT:

**THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**FMA 2907 of 2013**

**Sayra Banu**

**....Appellant/Claimant**

**Vs**

**1. United India Insurance Company Limited**

**2. Ghanshyam Yadav** **..... Respondents**

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Mr. Jayanta Kumar Mandal, Adv.

Mr. Sayantan Rakshit, Adv.

..... for the Appellant

Mr. Sanjoy Paul, Adv.

..... for the Respondent No. 1

**Heard On : 22.06.2022**

**Judgment on : 01.07.2022**

**Rabindranath Samanta, J:-**

1. Aggrieved by the inadequate compensation awarded by the learned Judge, Motor Accident Claims Tribunal, 3<sup>rd</sup> Court, Alipore (hereinafter referred to as the Tribunal) in MAC Case No. 32 of 2011 vide judgment dated 31.05.2013, the appellant Sayra Banu, an unfortunate mother, has preferred the instant appeal challenging the award. By the impugned award the learned Tribunal directed the respondent No.1, United India Insurance Company Limited to pay an amount of Rs.7,69,812/- as compensation to the appellant with interest at the rate of 9% per annum from the date of filing of the case.
2. The facts which led the filing of the claim application may be summarised as under:

On 15.07.2011 at about 19:30 hours Mehtab Hossain Sh @ Sk. Mehatab Hossain, the son of the claimant Saira Banu was coming along C.G.R. Road from East to West direction by a motor cycle bearing No. WB-20Y-4223. While he reached the junction of C.G.R. Road and Sick Lane, at that time a vehicle (lorry) bearing registration No. NL-01-G-1753 driven in rash and negligent manner and coming towards the same direction dashed against the son of the claimant from his backside. As a result of which Mehtab Hossai Sh @ Sk. Mehatab Hossain fell down on the road and he sustained severe head injuries. With the help of police officials of West Port Police Station he was taken to S.S.K.M. Hospital where he was declared brought dead. The victim died at the age of 29 years.

3. The appellant/claimant alleges that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place.
4. The victim Mehtab Hossain Sh @ Sk. Mehatab Hossain was an employee of ICICI Bank Limited and he used to earn Rs.15,944/- per month as his gross income.
5. On the allegation of rash and negligent driving on the part of the driver of the offending vehicle, an FIR was lodged at West Port Police Station and the FIR was registered as West Port P.S Case No. 92 of 2011 dated 15.07.2011 under Sections 279/304A/427, Indian Penal Code. At the time of the accident the offending vehicle was insured with the respondent No.1, United India Insurance Company Limited.
6. It may be noted that during the pendency of the claim case the husband of the claimant Sk. Ali Hossain died on 04.12.2012 and after amendment of the claim application the appellant is now the sole claimant. Under the aforesaid facts, the claimant sought for compensation of Rs.16,00,000/- with interest thereon and costs of the case.

7. The respondent No.1, United India Insurance Company Limited contested the case by filing a written and an additional written statement wherein it denied the averments/allegations as made by the claimant in the claim application. As a specific defence the respondent No.1 has stated in the additional written statement that the claimant has two other sons namely Eqbal Hossain and Akram Hossain and they are living with her. They look after their mother and the claimant is dependent on them. The respondent No.1 alleges that the victim was driving his motor cycle without wearing helmet on his head and as such he contributed negligence in causing the accident. On such grounds the respondent No.1 sought for dismissal of the case.
8. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:
  - i) Is the claim petition maintainable in law?
  - ii) Did the accident occur due to rash and negligent driving of the offending vehicle by its driver?
  - iii) Is the petitioner entitled to get the compensation, if so, to what extent?
  - iv) To what other relief or reliefs, if any, is the petitioner entitled?
9. Upon hearing the learned Advocates appearing for the parties and on consideration of the oral and documentary evidence adduced by the parties, the learned Tribunal after disposing of all the issues awarded the aforesaid compensation.
10. Learned Counsel appearing for the appellant submits that the learned Tribunal erroneously selected the multiplier as 8 considering the age of the parents of the deceased. Placing reliance on the decisions in the case of **Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors** reported in **(2009) 6 SCC 121** and in the case of **National Insurance Company Limited -Vs- Pranay Sethi and Ors** reported in **(2017) 16 SCC 680** learned lawyer submits that it has now become a thumb rule that the

multiplier shall be adopted only considering the age of the deceased died married or unmarried. Referring to a catena of decisions in the case of ***Sube Singh and Anr. -Vs- Shyam Singh (D) and Ors.*** reported in ***2018 SAR (Civil) 371***, in the case of ***Joseph Philip C.J. and Another -Vs- Judies and Others*** reported in ***2018 (1) T.A.C. 7 (SC)*** and in the case of ***M/s. Royal Sundaram Alliance Insurance Company Ltd. -Vs- Mandala Yadagari Goud & Ors*** reported in ***2019 SAR (Civil) 571*** learned lawyer submits that after the judgment rendered in the case of ***National Insurance Company Limited -Vs- Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680*** the Hon'ble Apex Court in these decisions has categorically held that if a bachelor died in a motor accident the multiplier shall be adopted considering his/her age only and not on consideration of the age of his/her parents. On such score, learned counsel argues that the learned Tribunal committed error by selecting the multiplier 8 instead of multiplier 17 and as such the computation of the compensation as made by the learned Tribunal is vitiated with errors and illegality.

11. Learned Counsel appearing for the respondent No.1 submits that the learned Tribunal without proper assessment of the evidence has wrongly recorded the finding that the victim used to earn Rs.15,944/-. Learned Counsel argues that as the recent judgments of this Court and the Hon'ble Apex Court indicate, the interest should be paid at the rate of 6% per annum and on such premise the interest calculated by the learned Tribunal at the rate of 9% per annum needs modification.
12. Admittedly, over the accident as above the West Port P.S. Case No. 92 of 2011 dated 15.07.2011 under Sections 279/304A/427, Indian Penal Code was registered. It is evident from Exhibit 3 i.e. the charge-sheet that on completion of the investigation charge-sheet under Sections 279/304A/427, Indian Penal Code was submitted against the driver of the offending vehicle. This shows that a prima facie case was established as to involvement of the

offending vehicle in causing the accident. However, the claimant in order to establish her case examined an independent witness namely Sanjoy Singha (P.W. 2). This witness in his evidence in chief has stoutly testified that he saw that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle and because of such rash and negligent driving the motorcyclist Mehtab Hossain Sh @ Sk. Mehatab Hossain was hit from behind and fell down from his motor cycle. Nothing has been derived by the respondent No.1 from the cross-examination of P.W. 2 to discredit his evidence. Therefore, the learned Tribunal has rightly held that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and because of the accident the victim sustained injuries on his person and succumbed to the injuries. As it appears from the evidence of P.W. 3 Sk. Shazzanan, an official of ICICI Bank Limited, Alipore Branch, the victim Mehtab Hossain Sh @ Sk. Mehatab Hossain was an employee of ICICI Bank Limited, Alipore Branch and before his death he used to draw gross salary of Rs.13,626/- and his net salary was Rs. 12,736/-. As I find from the pay slip of the victim for the month of July, 2011, his gross salary per month was Rs. 13,626/-. It is now the legal principle that the income of an employee shall be determined after deducting the Income Tax from his gross salary. That being so, the total income of the deceased shall be held to be of Rs.13,626/- per month. In view of this, the finding of the learned Tribunal that the monthly income of the deceased was Rs.15,944/- is erroneous.

13. In terms of the decision of the Hon'ble Apex Court in the case of **Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors** reported in **(2009) 6 SCC 121** at paragraph 42 and as clarified in the decisions reported in **2018 SAR (Civil) 371 Sube Singh and Anr. -Vs- Shyam Singh (D) and Ors., 2018 (1) T.A.C. 7 (SC) Joseph Philip C.J. and Another -Vs- Judies and Others** and **2019 SAR (Civil) 571 M/s. Royal Sundaram Alliance Insurance**

**Company Ltd. -Vs- Mandala Yadagari Goud & Ors**, the multiplier 17 shall be selected in case the victim died at the age of 26 to 30 years.

14. A reading of the judgment shows that the learned Tribunal has not computed the future prospect on the untimely demise of the victim. In the decision in the case of **National Insurance Company Limited -Vs- Pranay Sethi and Ors** reported in **(2017) 16 SCC 680** the Hon'ble Apex Court at paragraph 59.3 has held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. In view of the decision in **Pranay Sethi**, 50% shall be added to the actual income of the deceased.
15. The Hon'ble Apex Court in the decision in the case of **Sarla Verma** supra, has held at paragraph 32 that in regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. However, the learned Tribunal made 50% deduction of the compensation computed by it.
16. In view of the above, the computation of the compensation may be made in the following manner:
  - i) Monthly Income as assessed= Rs.  
13,626/-
  - ii) Annual Income to be assessed  
as (Rs. 13,626 x 12) = Rs.  
1,63,512/-
  - iii) Future Prospects to be assessed  
at the rate of 40% = Rs. 65,404/-
  - iv) Fifty percent deduction  
(Rs.2,28,916- Rs.1,14,458)=  
Rs.1,14,458/-
  - v) Multiplied by Multiplier 17 as per age

$$(Rs.1,14,458 \times 17) = \text{Rs. } 19,45,786/-$$

17. In the light of the observations of the Hon'ble Apex Court at paragraph 46 of the decision in the case of **Pranay Sethi** supra, only the spouse is entitled to consortium. Therefore, the claimant is not entitled to any amount of money as consortium. However, as directed by the Hon'ble Apex Court at paragraph 59.8 in **Pranay Sethi** the claimant is entitled to get amount of compensation of Rs. 30,000/- on conventional heads namely Loss of Estate(Rs.15,000/-) and Funeral Expenses (Rs.15,000/-). If this amount of Rs.30,000/- is added, the figure of the compensation comes to Rs. 19,75,786/-.
18. It appears that the learned Tribunal by the impugned award has directed that the awarded amount would carry interest at the rate of 9% per annum. As submitted by learned counsel for the respondent No.1, the interest should not exceed 6% per annum as the rate of interest relating to banking transactions do not carry interest more than 6% per annum in any manner. However, learned counsel for the appellants by referring to some decisions in the case of **Magma General Insurance Company Limited-Vs- Nanu Ram alias Chuhru Ram and Others** reported in **2018 (4) T.A.C. 345 (SC)**, in the case of **M/s. Royal Sundaram Alliance Insurance Company Ltd. -Vs- Mandala Yadagari Goud & Ors** reported in **2019 SAR (Civil) 571**, in the case of **Sunita Tokas and Another -Vs- New India Assurance Co. Ltd. & Anr** reported in **2019 (4) T.A.C. 357 (SC)**, in the case of **Smt. Meena Pawaia and others-Vs- Ashraf Ali and others** reported in **2022 (1) T.A.C. 5 (SC)** and in the case of **National Insurance Company Limited vs. Satish Kumar Verma and Ors** reported in **2019 (4) TAC 1 (SC)** argues that the Hon'ble Apex Court has awarded interest from 7% to 12% on the awarded amount of money in these decisions. In such context, learned Counsel submits that the interest at the rate

of 9% per annum as awarded by the learned Tribunal does not warrant any interference.

19. After reading all the aforesaid judgments I find with all humility that the Hon'ble Apex Court awarded the interest at varied rates considering the facts and circumstances of each case impliedly in exercise of power under Article 142 of the Constitution of India. Having heard learned counsel appearing for the respondent No.1 I think that it will be wise to award interest at the rate of 6% per annum on the awarded amount of money. Accordingly, the appellant/claimant is entitled to interest at the rate of 6% per annum on the aforesaid amount of money.
20. Therefore, the award passed by the learned Tribunal needs modification.
21. It is evident from the Lower Court Records that the claimant received a cheque of Rs.8,75,806/- on 26.07.2013 as compensation in terms of the award passed by the learned Tribunal.
22. After deduction of the aforesaid amount of Rs.8,75,806/- from the total awarded amount of money, the amount comes to Rs.10,99,980/-
23. In view of the findings as recorded above, the appeal merits success.
24. Accordingly, the appeal is allowed.
25. On modification of the judgment and the award dated 31.05.2013 passed by the learned Tribunal, the respondent No.1 is directed to pay the rest amount of Rs.10,99,980/- to the appellant/claimant.
26. The respondent No.1 is further directed to pay interest at the rate of 6% per annum on the awarded amount of money from the date of filing of the claim case on 11.08.2011. The respondent No.1 is directed to deposit the entire awarded amount of money with the interest at the rate of 6% per annum by cheque with the learned Registrar General, High Court, Calcutta within 4 weeks from date. After the deposit is made, the learned Registrar General shall

release the aforesaid amount of money to the claimant as expeditiously as possible.

27. With the above direction the appeal and the connected application, if any, stand disposed of.
28. No order as to costs.
29. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.
30. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

***(Rabindranath Samanta,J.)***