

19.12.2022
SL No. 58
Ct No. 654
Sk

**F.M.A.T. 1423 of 2014
CAN 1 of 2018(Old No. CAN 1666 of 2018),
CAN 2 of 2022**

**Saraswati Devi & Ors.
Vs
National Insurance Co.Ltd. & Ors.**

Sk.Abu Abbas Uddin
....for the appellants.

Mr. Deb Narayan Ray
.....for the respondents/insurance company.

This appeal is directed against the judgment and award dated 31 July 2014 passed by learned judge motor accident claims tribunal, Fast Track, 2nd court, Alipore, 24-Paraganas (South) in M.A.C Case no. 25 of 2013 under Section 163A of the Motor Vehicles Act, 1988 granting compensation of Rs. 1,40,000/-along with interest in favour of the claimants.

The brief fact of the case is that on 16 September 2011 at 1.00 hours the offending vehicle bearing registration no. WB-57A/1125 (lorry) dashed the taxi of the victim near Tandoor-e-Punjab at Chitra More causing his death. On account of sudden demise of the deceased-victim the claimants being the widow, sons and daughter filed application for compensation of Rs.3,60,000/-together with

interest under Section 163A of the Motor Vehicles Act, 1988.

Upon considering the materials on record and the evidence adduced by the claimants the learned tribunal granted compensation of Rs. 1,40,000/- together with interest in favour of the appellants-claimants.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have filed the present appeal.

The respondent nos. 2 & 3-owners of the offending vehicle did not contest the claim application and the case was disposed of *ex parte* against them. Accordingly the service of notice of appeal upon the said respondents is dispensed with.

Mr. Abu Abbas Uddin, learned advocate for appellants-claimants submits that sole ground raised in this appeal by the appellants-claimants is that the learned tribunal erred in determining the income of the deceased to the tune of Rs. 15,000/- per annum which ought to have been determined at the rate of Rs. 3000/- per month considering the price index prevailing at the relevant point of time. In the light of his aforesaid submissions he prays for enhancement of the compensation amount.

Mr. Deb Narayan Roy, learned advocate for respondent no.1-insurance company opposing such

prayer for enhancement of the compensation amount submits that the income so assessed by the learned tribunal has been rightly made as the claimants failed to produce any documentary evidence in support of the income of the deceased. Having heard the learned advocates of the respective parties, I now proceed to decide the sole issue involved in the present appeal throwing challenge to the quantum of income determined by the learned tribunal.

It is found from the impugned judgment that the learned tribunal has taken into account the notional income of Rs. 15,000/- per annum for computation of compensation amount on the ground that there is no sufficient evidence in support of income of the deceased. Be that as it may, considering the prevailing price index an amount of Rs. 3000/- per month should be considered for assessment of just compensation.

The other findings of the learned tribunal have not been challenged in the present appeal. The calculation of compensation is made hereunder.

Calculation of compensation

Monthly Income.....	Rs.3,000/-
Annual Income(Rs.3,000/-X12)	Rs.36,000/-
Less: Deduction of 1/3 rd of the Annual Income towards personal and living expenses..	Rs.12,000/-
	Rs. 24,000/-

Adopting multiplier	13	(Rs.24,000/-X
13).....Rs.3,12,000/-		
Add: General Damages.....		<u>Rs. 9,500/-</u>
Total Compensation		Rs.3,21,500/-

Thus the claimants are entitled to total compensation of Rs.3,21,500/- alongwith interest @ 6% per annum on the aforesaid amount from the date of filing of the application till the deposit of the amount.

Respondent no. 1-insurance company is directed to deposit aforesaid amount of Rs. 3,21,500/- alongwith interest @ 6% per annum on the aforesaid amount from the date of filing of the application till the deposit of the amount by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. Upon deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall disburse the aforesaid amount to the claimants in equal proportion on satisfaction of their identity.

Appellant no.1, mother and natural guardian of minor appellant no.4, shall receive the share of the minor and keep the share of the minor in the fixed deposit scheme of any nationalised bank or post office till the attainment of majority by the said minor.

Appellants are directed to deposit *ad valorem* court fees on the amount of compensation, if not already paid.

With the aforesaid observation the appeal stands allowed and disposed of. The impugned judgment and award of the learned tribunal is modified to the aforesaid extent. No order as to cost

All connected applications if any stands disposed of.

Interim order if any stands vacated.

Urgent photostat certified copy if applied for be supplied to the parties upon satisfaction of all legal necessary formalities.

(Bivas Pattanayak, J.)