

22.06.2023
SL No. 3 & 4
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 57 of 2010

The Oriental Insurance Co. Ltd.

Vs.

Sajli Murmu & Ors.

With

COT 92 of 2022

Sajali Murmu & Anr.

Vs.

The Oriental Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul

Ms. Jaita Ghosh

...for the appellant in FMA 57/2010
& respondents in COT 92/2022.

Mr. Krishanu Banik

Mr. Tathagata Banik

...for the respondents in FMA 57/2010
& appellant in COT 92/2022.

The instant appeal is preferred by the insurance company after being aggrieved by and dissatisfied with the order passed by the Motor Accident Claims Tribunal (District Judge) Malda in M.A.C. Case no. 131 of 2008. The claimants have also preferred the COT 92 of 2022 being aggrieved by the same judgment passed by the tribunal.

The brief fact of the case is that the deceased, namely, Palush Mardi was a young school teacher who died a road trafficking accident on 3.6.2008 by rash and negligent driving of the driver of truck bearing no. WB/59/8403.

The deceased was bachelor and the parents filed the claim application under Section 166 of the

Motor Vehicles Act before the learned tribunal.

Learned tribunal heard the claimant and insurance company took the evidences and after considering the materials on record passed the impugned order directed the insurance company to pay compensation amounting to Rs.14,68,624/- to the claimants.

The insurance company filed this appeal on the ground that the impugned order passed by the learned tribunal is excessive and erroneous. Learned tribunal has failed to appreciate the facts and circumstances of this case, the compensation awarded against the insurance company is not a just and proper compensation. He further pointed out that the evidence adduced by the witnesses on behalf of the petitioners is not at all justifiable according to the provision under Section 166 of the Motor Vehicles Act. The appellant also contended that, the deduction towards the personal expenses of the deceased would be $\frac{1}{2}$ of his annual income or be a bachelor.

Learned advocate appearing on behalf of the respondents-claimants and Cross Objector raised strong objection and submitted before this court that the observation of the learned tribunal is erroneous and the computation of just and proper compensation by the tribunal is also not correct according to the present position of the law of land.

He further pointed out that the deceased was a teacher so he was in a permanent job; he died in a very tender age thus the 50% of actual salary of the income should be added as a future prospect. He further pointed out that the multiplier should be considered according to the age of the deceased but the learned tribunal has considered the multiplier of this case according to the age of the parents which is not at all correct. In support of this submission, he cited a decision of Hon'ble Apex Court reported in **2018(1)TAC 689 (SC) Sube Singh Vs Shyam Singh**. Perused the observation of Hon'ble Apex Court. It appears that the Hon'ble Apex Court following the previous judgment of learned three Judge Bench of the Supreme Court passed in **Munna Lal Jain**, Hon'ble Supreme Court in Subash Singh (Supra) also makes it clear that the multiplier of a case where a bachelor has died should be considered according to the age of the deceased not according to the age of the dependents.

In this case, it appears that the learned tribunal has erroneously considered the multiplier of 16 according to the age of the mother but in this case the correct multiplier would be 18 considering the age of the deceased was within the age group of 21-25 at the date of accident. As the deceased was a bachelor. The deduction part would be 50% but the learned tribunal has erroneously deducted 1/3rd of

his annual income towards the deduction of his personal expenses. It further appears that the general damages of the case would be 30,000/- as the deceased was a bachelor according to the direction of Hon'ble Supreme Court passed in **Pranay Sethi**. Considering the submission of the respective parties, it appears that the just and proper compensation should be recasted by modifying the award passed by the tribunal.

Learned advocate for the respondents has handed over a draft assessment of compensation which appears to me helpful. Thus, the just and proper compensation of this case is as follows:-

Calculation of compensation

1. Monthly Income be assessed as.....	Rs.11,458/-
	[(11,658-110) P. Tax]
2. Annual Income be assessed as	
	...(Rs.11,458/- X 12).....
3. 50% future prospect	Rs.1,37,496/-
	<u>Rs 68,748/</u>
4. 1/2 nd personal leaving expenses.....	Rs.2,06,244/-
5. Multiplier as per age of 23	
	(Rs.1,03,122/- X 18).....
6. General Damages.....	Rs.18,56,196/-
	<u>Rs.30,000/-</u>
	Rs18,86,196
7. Withdrawn	
(as per High court Calcutta).....	<u>Rs.7,50,000/-</u>
Balance.....	Rs.11,36,196/-

The award shall carry 6% interest on Rs.11,36,196/- from the date of claim application and 6% interest on Rs. 7,50,000/- from the date of filing of the claim application till the date of withdrawal i.e.09.09.2010.

It appears that during the pendency of instant appeal, the appellant-insurance company has deposited the entire awarded amount by virtue of order of this court with the office of learned Registrar General, High Court, Calcutta. The claimants-respondents has withdrawn the amount of Rs.7,50,000/- on 09.09.2010.

In considering the attending situations here, the office of the learned Registrar General, High Court, Calcutta is directed to calculate the total of the principal amount and accrued interest thereon and inform the same to the learned advocate on record for the parties within July 12, 2023. The amount should be allowed to be withdrawn by the respondents-claimants through their advocate of record and the insurance company is directed to pay the rest amount within August 18, 2023.

Let a copy of this order be supplied upon the learned Registrar General, High Court, Calcutta for proper compliance.

Appeal alongwith COT are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)