

03.10.2023

Ct. no.654

Sl. No. 14.

KB

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

F.M.A. 307 of 2021

**Durga Maity @ Lusi Maiti & Ors.
Vs.**

National Insurance Company Ltd. & Anr.

Mr. Jayanta Kumar Mandal
...for the appellants-claimants.

Mr. Rajesh Singh
... for the respondents-Insurance Co.

This appeal is preferred against the judgment and award dated 28th January, 2020 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court at Tamruk in MAC Case No. 87 of 2014 granting compensation of Rs.5,29,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988 .

As per the report of the Stamp Reporter dated 23rd February, 2021, the appeal is preferred within the statutory period of limitation.

Accordingly, the appeal is formally admitted and registered.

Since the claim case was disposed of *ex parte* against the owner of the offending vehicle, hence service of notice of appeal upon the respondent no.2-owner of the offending vehicle stands dispensed with.

With the consent of the parties, calling for of lower court records and preparation of informal paper book is dispensed with.

The brief fact of the case is that on 14th June, 2013 at about 1.30 p.m. while the victim was travelling on a motor cycle bearing registration no. WB-01N/3272 keeping left side of the Amta-Muchighata road and when he reached near Fokir Das school gate at that time the offending vehicle bearing registration no.WB-11A/6016 coming from Amta Side towards Muchighata side with high speed and in rash and negligent manner dashed the victim as a result of which the victim sustained grievous injuries on his head, chest and waist and was taken to S.S.K.M. Hospital, Kolkata where he succumbed to his injuries and died on 18th June, 2013. On account of sudden demise of the victim the claimants, being the wife, minor children and parents filed application for compensation amount of Rs.10,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents which have marked as **Exhibit 1 to 7** respectively.

The respondent no.1-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.5,29,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Jayanta Kumar Mandal, learned advocate for appellants-claimants submits that the learned Tribunal erred in determining the income of the victim at Rs.3,000/- per month without considering the evidence adduced in this regard on behalf of the claimants. He submits that since the accident has taken place in the year 2013 the income should be considered at Rs.4,000/- per month. He further submits that the claimants are also entitled to future prospect of 40% of the annual income of the victim. In light of his submissions as above, he prays for enhancement of the compensation amount.

Mr. Rajesh Singh, learned advocate for respondent no.-1-insurance company opposes such prayer for enhancement.

Having heard the learned advocates for respective parties, the following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the victim and *secondly*, whether the

claimants are entitled to an amount equivalent to 40% of the annual income of the victim towards future prospect.

With regard to the first issue relating to determination of income of the victim, it is found that the learned Tribunal has considered the income of the victim at Rs.3,000/- per month. Be that as it may, bearing in mind the the economic fctors and the cost of essential commodities prevailing in the year 2013, I am of the opinion that an amount of Rs.4,000/- per month as income of the victim would be reasonable and appropriate in the facts and circumstances of the case.

Since the victim at the time of accident was admittedly 28 years of age and was self employed, hence, following the principles laid down by the Hon'ble Supreme Court reported in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, the claimants are entitled to an amount equivalent to 40% of the annual income towards future prospect.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid factors, calculation of compensation is made hereunder.

Calculation of Compensation

Monthly income	Rs.4,000/-
Annual income (Rs.4,000/- x 12)	Rs.48,000/-

Add: 40% of the annual income towards future prospect	Rs.19,200/-
	Rs.67,200/-
Less: 1/4 th towards personal and living expenses	Rs.16,800/-
	Rs.50,400/-
Multiplier 17 (Rs.50,400/- x 17)	Rs.8,56,800/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total	Rs.9,26,800/-

Thus the claimants are entitled to compensation of Rs. 9,26,800/- together with interest @ 6% per annum from the date of filing of the claim application till payment. It is informed that the claimants have already received an amount of compensation of Rs. 5,29,000/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of Rs.3,97,800/- together with interest at the rate of 6% per annum from the date of filing of the claim application.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation and interest as indicated above by way of a cheque before the learned Registrar General, High Court, Calcutta together with interest within six weeks.

Upon deposit of the aforesaid amount, Learned Registrar General, High Court, Calcutta shall release the same in favour of the claimants in equal proportion after

making payment of Rs.40,000/- in favour of the appellant no.1-widow of the deceased towards spousal consortium, upon satisfaction of their identity.

Appellant no.1, being the mother and natural guardian of minor appellant nos.2 to 4 shall receive the share of the minors and keep the same in a Fixed Deposit of any nationalised bank or post office until attainment of majority of the said minors.

With the above observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

The order of the learned Tribunal granting liberty to the insurance company to recover the compensation amount from the owner of the offending vehicle is not interfered with.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)