

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 168 OF 2019

With

IA No. CAN 1 of 2019 (Old No. CAN 2148 of 2019)

Sudarshan Maiti & Anr.

Versus

The National Insurance Co. Ltd. & Anr.

For the appellants/claimants : Amit Ranjan Roy, Adv.

For the Respondents/Ins. Co. : Mr. Saibalendu Bhowmick, Adv.

Heard on : 11.08.2023

Judgment on : 06.09.2023

Ajay Kumar Gupta, J:

1. The appellants have filed this appeal feeling aggrieved and dissatisfied with the judgment and award dated 10th day of October, 2018 passed by the Ld. Judge, Motor Accident Claims Tribunal in M.A.C. Case No. 41 of 2017/ MACC 378 of 2012, thereby the Tribunal awarded a compensation to the tune of Rs. 3,00,000/- together with interest @ 6% per annum from the date of filing of claim application till recovery in favour of appellants/claimants under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

2. Learned Advocate appearing on behalf of the appellants/claimants moved an application for expeditious hearing of the appeal on the ground that the instant appeal has been filed within 90 days as provided under Section 173(1) of the Motor Vehicles Act, 1988. In addition, he further submitted that the grounds of challenge of the judgment and award involve very simple issues. The Ld. Tribunal committed error in

considering multiplier, general damages and for assessing less notional income of the victim, though the case is wholly based on structural formula. The Act provides the claim application filed under Section 163A of the Motor Vehicles Act falls under no fault liability and it is wholly based on structural formula as stipulated in Schedule II of the Motor vehicles Act, 1988.

3. Per contra, Ld. Counsel appearing on behalf of the respondent No.1/insurance company submitted the Ld. Tribunal has rightly considered the notional income as Rs. 30,000/= per annum and multiplier as per the age of the victim found at the time of accident and finally awarded a total sum of Rs.3,00,000/= along with imposing interest @ 6% per annum from the date of filing of claim application till recovery in favour of appellants/claimants. Ld. Advocate further submitted that Ld. Tribunal awarded Rs. 20,000/- on account of Funeral Expenses and loss of estate though it ought to be Rs. 9500/- in total for General damages, which is required to be corrected.

4. Heard both sides and on perusal of the memo of appeal, it appears the appellants/claimants filed a claim case for compensation under Section 163 A of the Motor vehicle Act, 1988 to the effect that victim was travelling by a Tourist Bus to Puri being Registration No. WB 29A/2999 through N.H.-5 and while the bus reached near Jamjhadi under P.S. Simulia in Balasore district, the bus stopped and parked by the side of the road. Some passengers of the said bus got down for natures call. At that time, suddenly, a vehicle bearing registration No. OR 05 AG-8341 (truck), which was coming from Balasore side with terrific high-speed endangering to human life and safety dashed the back side of the tourist bus and ran over some passengers along with the victim and capsized into the road side Nayanjuli. As a result, nine passengers along with the victim expired on the spot and some other passengers sustained grievous injury.

5. Respondent no.1/ insurance company has contested the case by filing written statement denying all the averments and

allegations made by the appellants/claimants. Whereas, owner to the offending vehicle did not contest the case and the case was decided ex parte against the respondent No.2/owner of the offending vehicle.

6. Appellants/claimants has adduced claimant No.1 as P.W.1 and exhibited number of documents marked as exhibits no. 1 to 7. Those documents are FIR, Charge sheet, two seizure lists, P.M. report, Insurance Policy and Voter I.D. of the victim and Sudarshan Maity to support their case. Respondent No.1 did not adduce any witness on its behalf.

7. Claim case filed under Section 163A of the Motor Vehicles Act falls under no fault liability and compensation must be in accordance with structural formula as stipulated in Schedule II of the Motor vehicle Act. The Tribunal has assessed his notional income as 30,000/- per annum though there was a specific observation of the Hon'ble Supreme Court that even an unskilled labour can earn minimum of Rs 100/- rupees per day

and 3000/- per month in a case **Laxmi Devi Vs. Md. Tabbar and Another**. Even, when claimants fail to prove actual income of the victim prior to accident then it can be safely accepted as notional income as Rs. 36,000/= per annum.

8. Ld. Tribunal has considered the evidence as led by the claimants/appellants and took a view that the income of the victim has not been proved, therefore, the notional income considered as Rs. 30,000/- per annum and the statutory deduction would be 1/3 and finally came to conclusion that the amount of compensation to the tune of Rs. 2,80,000/- after applying multiplier 14 on the basis of age of the victim as 42 years at the time of accident as per voter ID Card of the victim (Exbt. 7). None of the parties raised any question on the issue of age of the victim but raised regarding the multiplier taken by the Learned Tribunal and submitted it should be 15 instead of multiplier 14. In addition, Ld. Tribunal also awarded a lump sum of Rs. 20,000/- on account of funeral expenses and loss of his state and finally awarded a sum of Rs. 3,00,000/- in total.

The Tribunal further observed that claimants are also entitled to get interest at the rate of 6% per annum from the date of filing of this case till recovery of the amount. The said amount if not paid within two months, then the amount will accrue interest @ 9% per annum.

9. Learned advocate appearing on behalf of the appellants further raised a point that Ld. Tribunal has awarded the compensation without applying his judicious mind and awarded the compensation only on the basis of surmises and conjecture. According to him following amount ought to have been awarded by the Tribunal as follows:

- a) The income of the victim if not proved, even then, it should be Rs. 36000/- per annum.
- b) Multiplier should be 15 instead of 14.

10. At the very outset, this Court would like to say compensation should be allowed wholly on the basis of structural formula in this case. According to old provision

before amendment, any claim made under the said Section 163A of the said act need not requires the claimant from proving the negligence on the part of the offending vehicle. It is a settled principle of law that even if the claimant is at fault, claimant can resort to Section 163 A of the Motor Vehicles Act, 1988.

11. If I consider the structural formula mentioned in Schedule II of the said Act, this court finds if claimants fail to prove the actual income prior to the accident than the notional income should be Rs. 15,000/= but it was given effect from 14.11.1994. Accordingly, to the Apex Court decision in **Laxmi Devi vs. Md. Tabbar and Another**¹ that even unskilled labour can earn Rs. 100/- per day i.e. Rs. 3000/- per month. Hence, his total income would be Rs. 36, 000/= per annum. That is the settle proposition in a case falls under section 163A Motor vehicle Act. Thus, this court can safely accept his notional income as Rs. 36,000/= Per annum on the date of accident

¹ **2008 (2) T.A.C. 394 (SC)**

12. Similar, there should be Rs. 9500/= in total for the head of General damages particularly under funeral expenses Rs. 2,000/-, loss of consortium, if the beneficiary is spouse Rs. 5,000/- and loss of estate of Rs. 2,500/- is to be awarded as per the structural formula. So, this Court is of the considered view that the appellant-claimants are entitled to general damages of Rs. 9,500/- only instead of Rs. 20,000/= as allowed by the Tribunal.

13. The Ld. Tribunal has accepted the age of the victim on the date of accident as 42 years which falls under the age ground of 40 to 45 years and for that actual multiplier would be 15 as per the aged proved by the appellant for the victim on the date of accident in view of Schedule II of the Old Motor Vehicles Act, 1988. Deduction should be 1/3rd on the total income of the victim, if had she been alive for his personal expenses to maintain herself.

14. Keeping in mind the above observation, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3000/-
Annual Income (Rs. 3000/- X 12)	Rs. 36,000/-
Less: deduction 1/3 rd of the total Annual income (towards personal and living expenses)	Rs. 12,000/-
Total income after deduction	Rs. 24,000/-
Total loss of Dependency Rs. 24,000/- X 15 (Multiplier)	Rs. 3,60,000/-
Add: Loss of estate	Rs. 2,500/-
Add: Funereal	Rs. 2,000/-

Expenses	
Add: Loss of consortium	Rs. 5,000/-
Total compensation	Rs. 3,69,500/-

15. Thus, the appellants/claimants are further entitled to get enhanced compensation amount comes to Rs. 69,500/= (Rs. 3,69,500/- minus Rs. 3,00,000/-) which shall carry interest of 6% per annum from the date of filing of the claim application i.e. from 12.04.2018 till final payment.

16. The respondent no. 1-Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 69,500/= and the interest as indicated above by way of cheque before the learned Registrar General, High Court Calcutta within a period of 4 weeks from date.

17. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall

release the amount in favour of the appellants /claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 23rd November, 2021.

18. With the above observations, the instant appeal stands disposed of.

19. Consequentially, application being CAN NO. 1 of 2019 is also thus disposed of.

20. The impugned judgment and award of the learned Tribunal dated 23rd November, 2021 is modified to the aforesaid extent only. No order as to costs.

21. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

22. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

23. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)