

26.07.2023

Ct. no.654

Sl. No. 78

KB

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

**F.M.A. 1448 of 2022
with
IA No. CAN 1 of 2022**

**Cholamandalam Ms. General Ins. Co. Ltd.
Vs.
Hasi Mondal & Ors.**

Mr. Soumalya Ganguly
... For the appellant/ Ins. Company.

Ms. Sima Ghosh
Ms. Moumita Chakraborty
... For the Respondents/ Claimants.

Affidavit of Service filed on behalf of the Insurance
Company is taken on record.

This matter is treated under "*Hearing*" in the day's
list in view of submissions made by learned advocate for
respective parties.

This appeal is preferred against the judgment and
award dated 10th January, 2022 passed by the learned
Additional District Judge-cum-Judge, Motor Accident
Claims Tribunal, 2nd Court, Suri, Birbhum in MAC Case
No.142 of 2012 under Section 163A of the Motor Vehicles
Act, 1988.

As per report of Additional Stamp Reporter dated
11th August, 2022, this appeal is preferred within the
statutory period of limitation.

Accordingly, appeal is formally admitted and
registered.

With the consent of the parties calling for Lower Court Records and preparation of paper books are dispensed with.

Since the respondent no.3-owner of the offending vehicle did not contest the claim application, hence service of notice of appeal upon the said respondent stands dispensed with.

The brief fact of the case is that on 9th December, 2011 at about 7.35 P.M. while the victim was going towards Mollarpur on a motor cycle bearing registration no. WB-54H-2074 along with a pillion rider and when he reached near Manager Para, Village on Moregram – Panagarh High Way (NH-60) suddenly a cow came in front of the motor cycle due to which he dashed with the offending lorry bearing registration no.WB59A/4812 which was standing on the road. As a result of said accident the victim sustained serious injuries and was admitted to Suri Sadar Hospital where he succumbed to his injuries and died on the same day. On account of sudden demise of the victim, the claimant being the parents filed application for compensation of Rs.5,30,000/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

In order to establish the case the claimant No.2 examined himself and produced documents which has been marked as Exhibit 1 to 6 respectively.

The appellant-Insurance Company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, learned Tribunal granted compensation of Rs.9,89,000/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act.

Being aggrieved and dissatisfied with the impugned judgement and award, the Insurance Company has preferred the present appeal.

Mr. Soumalya Ganguly, learned advocate for the appellant-insurance company submits that the learned Tribunal determined the income of victim at Rs.6,000/- per month which is beyond the scope of Second Schedule of the Motor Vehicles Act whereas it ought to have considered the income at Rs.3,300/- per month of the victim. Further the multiplier should be 17 instead of 18 adopted by the learned Tribunal. He further submits that general damages would be Rs. 4500/- instead of Rs.1,25,000/-. In the light of the aforesaid submissions, he prays for modification and/or setting aside the impugned judgment and award.

Ms. Sima Ghosh, learned advocate for respondents-claimants, concedes to the submissions advanced on behalf of the appellant-insurance company.

Having heard the learned advocate for the respective parties the following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the victim at Rs.6,000/- per month. *secondly*, whether multiplier to be adopted should be 17 instead of 18 adopted by the learned Tribunal and *lastly*, whether the general damages should be Rs.4,500/- instead of Rs.1,25,000/-.

With regard to the first issue, it is found that the learned Tribunal has determined the income of the deceased at Rs.6,000/- per month. However, considering the Second Schedule of the Act and victim was mining engineering student, the income of the victim is taken at Rs.3,300/- per month.

So far as the multiplier is concerned, it is found that at the time of accident admittedly the victim was more than 22 years of age. Hence, following Second Schedule of the Act, the multiplier should be 17 instead of 18 adopted by the learned Tribunal.

The last issue relates to the extent of general damages. Since the application has been filed by the claimants under Section 163A of the Act, hence in terms of Second Schedule to the Act, general damages under the conventional heads of loss of estate and funeral expenses would be Rs.2,500/- and Rs.2,000/- respectively.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly Income	Rs.3,300/-
Yearly Income (Rs.3,300/- x 12)	Rs.39,600/-
Less: 1/3 rd towards personal and living expenses	Rs.13,200/-
	Rs. 26,400/-
Multiplied 17 (Rs.26,400/- x 17)	Rs.4,48,800/-
Add: General damages Loss of estate: Rs.2,500/- Funeral expenses: Rs.2,000/-	Rs.4,500/-
Total	Rs.4,53,300/-

Thus, the claimants are entitled to compensation of Rs. 4,53,300/- together with interest @ 6% per annum from the date of filing of claim application (07.09.2012) till payment.

Appellant-Insurance Company is directed to deposit the compensation amount as well as interest as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Respondent nos. 1 & 2 (claimants) are directed to deposit *ad valorem* Court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the compensation amount and the interest as above, learned Registrar General High Court,

Calcutta shall release the aforesaid amount in favour of the respondent nos. 1 & 2 (claimants) in equal proportion, upon satisfaction of their identity and payment of *ad valorem* Court fees, if not already paid.

It is found that the appellant-insurance company has deposited statutory amount before the registry of the Court vide OD Challan No. 428 dated 12.05.2022. The statutory deposit together with accrued interest, if any, be refunded to the insurance company.

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

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)