

17.01.2023
SL No.41
Court No. 654
Ali

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

**F.M.A. 1374 of 2022
IA No: CAN/1/2022**

Cholamandalam MS General Insurance Co. Ltd.

Versus

Anima (Anu) Mondal & Anr.

Mr. Soumalya Ganguly
...for the appellant-Insurance Co.

Mr. Krishanu Banik
.....for the respondent No. 1-claimant

This appeal is directed against the judgment and award dated 15th July 2022 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 3rd Court, Purba Bardhaman in M.A.C. Case no. 11 of 2015 under Section 163A of the Motor Vehicles Act, 1988 granting compensation of Rs.6,97,640/- in favour of the claimant along with interest.

As per report of the Additional Stamp Reporter dated 25.11.2022 the appeal is filed within the statutory period of limitation.

The appeal is formally admitted and registered.

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

Since respondent no.2-owner of the offending vehicle did not contest the claim application and the case was disposed of *exparte* against him, hence service of notice of appeal upon the said respondent is dispensed with.

The brief fact of the case is that on 20th March 2014 at about 5.00 AM while the victim was standing on the left side of NH2 at Muchi Para Traffic Signal at that time the offending vehicle bearing registration no.WB-41E-5544 (mini truck) dashed him from behind in a rash and negligent manner as a result of which he sustained severe bleeding injuries all over his body. The victim was immediately taken to Bidhannagar Hospital, Durgapur by the local people where the attending doctor declared the victim as dead. On sudden demise of the victim the claimant being the widow filed application under section 163A of the Motor Vehicles Act, 1988 for compensation.

Upon consideration of materials on record and the evidence adduced by the claimants the learned tribunal granted compensation in favour of respondent-claimant to the tune of Rs.6,97,640/- along with interest.

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company filed the present appeal.

Mr. Soumalya Ganguly, learned advocate for appellant-insurance company submits that though the application was filed by the claimants under Section 163A of the Motor Vehicles Act, 1988 but the learned tribunal erred in computing the compensation amount on the wrong presumption of the application being one under Section 166 of the Motor Vehicles Act. He submits that the computation made by the learned tribunal is totally erroneous which needs to be rectified.

Mr. Krishanu Banik, learned advocate for respondent no. 1-claimant submits that the learned tribunal ought to have followed the Second Schedule to Section 163A of the Motor Vehicles Act while computing the compensation amount.

It is found from the impugned judgment that the claimant filed application under Section 163A of the Motor Vehicles Act. However, the learned tribunal made computation of compensation amount as if such application has been filed under Section 166 of the Motor Vehicles Act. The learned tribunal should have adhered to the Second Schedule to Section 163A of the Motor Vehicles Act. In view of the above, the computation made by the learned tribunal needs to be modified.

The income assessed by the learned tribunal of Rs. 3,300/- has not been challenged in the appeal.

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

Calculation of compensation

Monthly Income.....	Rs.3,300/-
Annual Income...(Rs.3,300/- X 12).....	Rs.39,600/-
Less: Deduction of 1/3 rd of the Annual Income (towards personal and living expenses).....	<u>Rs.13,200/-</u>
	Rs.26,400/-
Adopting multiplier 17(Rs.26,400/- X 17).	Rs.4,48,800/-
Add: General Damages.....	<u>Rs.9,500/-</u>
Total Compensation.....	Rs.4,58,300/-

Thus the claimant is entitled to compensation amount of Rs.4,58,300/- alongwith interest at the rate of 6% per annum from the date of filing of the claim application till deposit. Admittedly the respondent no.1-claimant has not received any amount of compensation as per order of the learned tribunal.

Appellant-insurance company is directed to deposit the amount of compensation of Rs.4,58,300/- alongwith interest at the rate of 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Respondent no.1-claimant is directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall release the amount in favour of the respondent no.1-claimant upon satisfaction of her identity and upon payment of *ad valorem* court fees, if not already paid.

The amount of Rs.25,000/-deposited by the appellant-insurance company with the Registry of this court vide OD challan no. 2324 dated 3.11.2022 alongwith accrued interest be refunded to the appellant-insurance company.

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 orders, if any, stands vacated.

Urgent photostat certified copy if applied for by the parties shall be delivered upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)