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CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURIDICTION

FMA 14 of 2023

Sujata Mandal (Pradhan) & Ors.
-VS-
United India Insurance Company Ltd. & Anr.

Mr. Gobinda Saha,
Mr. Tamal Kumar Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey
... for the appellants-claimants

Mr. Bipul Ranjan Bhattacharjee
... for the respondent no.1- insurance company

This appeal is preferred against the judgment and award dated 23rd December, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd (Special) Court, Jalpaiguri in MAC Case No. 39 of 2022 granting compensation of Rs. 42,00,882/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 24th December, 2021 at about 2.30 p.m. while the victim was proceeding towards Dhumpara Basti from his residence by riding his motorcycle and when he reached near Nunkhawa Danga under P.S. Banarhat, at that time the offending vehicle bearing registration no. WB-74Q/6876 (Motorcycle) in a rash and negligent manner dashed the victim from the opposite side. As a result of which, the victim sustained grievous injuries and was immediately shifted to Banarhat Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the claimants being the widow, son and minor daughter filed application for compensation of Rs. 49,80,928/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **9** respectively.

The respondent no. 1-insurance company also adduced the evidence of one witness.

By order dated 5th July, 2023, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with since he did not contest the claim application before the learned Tribunal.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 42,00,862/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

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

Mr. Gobinda Saha, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the actual monthly income of the deceased by deducting House Rent Allowance, Medical Allowance Electricity Allowance and Professional Tax from gross monthly income whereas it ought to have deducted only the Professional Tax from the gross monthly salary to determine the actual monthly income of the deceased. He further submits that the learned Tribunal failed to grant interest on compensation amount from the date of filing of the claim application in terms of Section 171 of the Motor Vehicles Act. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Bipul Ranjan Bhattacharjee, learned advocate for the respondent no. 1-insurance company submits that the annual earnings of the victim should be subjected to income tax of 10% of such earnings, which should also be deducted from the gross annual income to arrive at the actual income of the victim. He further submits that since there was no delay in disposal of the claim application, hence the learned Tribunal has rightly made interest payable on default.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the actual income of the deceased and *secondly*, whether the claimants are entitled to interest on the compensation amount.

With regard to the first issue, it is found that the learned Tribunal determined the actual monthly income of the deceased by deducting House Rent Allowance, Medical Allowance, Electricity Allowance and Professional Tax from the gross salary. Be that as it may, the actual monthly income is to be calculated deducting income tax on income and the professional tax from the gross salary. On perusal of the pay slips of the victim (**Exhibit 9**), it is found that the victim had total monthly earnings of Rs. 48,527/- just prior to the accident. The learned Tribunal has deducted the House Rent Allowance, Medical Allowance, Electricity Allowance and Professional Tax from the total earnings. However, only the professional tax of Rs. 200/- is to be deducted from the total earnings since the pay slip shows that there is no income tax liability. Therefore, the actual monthly income of the deceased would be Rs. 48,527/- less Rs. 200/- (Professional Tax), which comes to Rs. 48,327/-.

With regard to the second issue, it is found that the learned Tribunal did not grant any interest on the compensation amount. However, in terms of Section 171 of the Motor Vehicles Act, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

The other factors have not been challenged in this appeal.

Bearing in mind the aforesaid, the calculation is made hereunder:

Calculation of Computation

Monthly income	Rs.48,327/-
Yearly income (Rs.48,327/- x 12)	Rs.5,79,924/-
Add: 15% of the yearly income towards Future Prospect	Rs.86,989/-
	Rs.6,66,913/-
Less: 1/3rd towards personal and living expenses	Rs.2,22,304/-
	Rs.4,44,609/-
Multiplier 11 (Rs.4,44,609/- x 11)	Rs.48,90,699/-
Add: General Damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs. 70,000/
Total amount	Rs.49,60,699/-

Thus, the claimants are entitled to compensation of Rs. 49,60,699/- together with interest @ 6% per annum from the date of filing of the claim application (01.02.2022) till payment.

It is informed that the claimants have already received an amount of Rs. 42,00,882/- in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 7,59,817/- together with interest @ 6% per annum from the date of filing of the claim application (01.02.2022) till payment. The claimants are also entitled to interest @ 6% per annum on the compensation amount of Rs. 42,00,882/- awarded by the learned Tribunal from the date of filing of the claim application (01.02.2022) till deposit was made before the learned Tribunal.

The respondent no.1 -insurance company is directed to deposit the balance amount of compensation of Rs. 7,59,817/- and the interest as indicated above, before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri by way cheque within a period of six weeks from date.

The appellants-claimants are directed to deposit *ad valorem* Court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid balance amount of compensation and interest as indicated above, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall release the abovementioned amount in the proportion that 40% of the amount shall be released in favour of the appellant no. 1 and remaining amount shall be released in equal share in favour of the appellant nos. 2 and 3, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

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.

Let a copy of this order along with lower court records be sent down to the learned Tribunal in accordance with rules.

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

(**Bivas Pattanayak, J**.)