

**HIGH COURT AT CALCUTTA
In the Circuit Bench at JALPAIGURI
(Civil Appellate Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 24 of 2023

Panoswari Chowdhury

Vs.

Shriram General Insurance Co. Ltd. & Ors.

For the Appellant

: Mr. Gobinda Saha, Adv.
Mr. Tamal Kumar Sen, Adv.
Ms. Priyanka Dey, Adv.
Mr. Milan Ch. Laskar, Adv.
Mr. Sanghai Chowdhury, Adv.

For the Respondent No. 1

: Mr. Partha Bhowmik, Adv.
Mr. Rahul Ghatak, Adv.

Heard on

: 13.10.2023

Judgment on

: 20.12.2023

Ajay Kumar Gupta, J.

1. Appellant/claimant has filed this appeal feeling aggrieved with a judgment and award dated 30.03.2023 passed by the

Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri -cum-Motor Accident Claims Tribunal Judge, Jalpaiguri in M.A.C. Case No. 29 of 2020 thereby the learned Tribunal allowed the claim application filed u/s 166 of the Motor Vehicles Act on contest without any cost. The learned Tribunal awarded a total sum of Rs. 4, 06,600/- only towards compensation from the O.P. No. 3/ Insurance Company. Non-payment of the compensation amount within the stipulated period of sixty days from the date, the same would carry interest at the rate of 6% per annum to be calculated from the date of filing of the claim application i.e. 01.02.2020 till realization.

2. The facts giving rise to file this appeal is to the effect that on 11.01.2020 at about 4.00 a.m. when the victim Rajkumar Chowdhury was proceeding towards Siliguri from the side of Naxalbari by one vehicle bearing registration no. WB-73E-7253 (Tata Ace) to purchase live poultry birds for his business, at that time near Birsa Munda College, the driver of the another vehicle bearing registration no. MH-40BL-2894 (Truck) dashed

his vehicle from behind. The said accident took place due to rash and negligent driving by the driver of the offending vehicle as a result the victim sustained serious injuries on his person. He was immediately shifted to Naxalbari Rural Hospital where the attending doctor declared him dead. The accident occurred due to rash and negligent driving on the part of the driver of the vehicle bearing registration nos. WB- MH-40BL-2894 (Truck). A criminal case being Naxalbari P.S. Case No. 18 of 2020 dated 11.01.2020 was started against the driver of the offending vehicle bearing registration no. WB-73E-7253 (Tata Ace) for offences punishable under Sections 279/304A of the Indian Penal Code.

3. Claimant filed claim application before the Ld. Tribunal for compensation due to death of victim but the Learned Tribunal did not award the actual compensation though the claim of the claimant was Rs. 22,26,000/-. Appellant/Claimant prays for enhancement of the compensation in the instant appeal.

4. Learned advocate appearing on behalf of the appellant/claimant submitted that the learned Tribunal awarded a total sum of Rs. 4, 06,600/- only towards compensation. However, no interest was awarded on such compensation from the date of filing application though it is a settled position of law that interest should be calculated from the date of filing of the claim application till realization. Here, learned Tribunal attributed delay in proceeding to the appellant though the question of delay in proceeding does not arise while granting interest on compensation amount.

5. It is further submitted that the learned Tribunal did not consider the actual income of the victim as claimed by the claimant as Rs. 10,000/- per month from his business. To substantiate his claim, the claimant also produced the sale delivery challans standing in the name of Basundhara Poultry and same has been exhibited in the instant case as Exhibit 9. If it would have been considered then compensation amount would have more than the awarded compensation. The learned Tribunal only wrongly assessed Rs. 3,300/- per month as

notional income of the victim observing therein that the claimant failed to prove the income of the deceased though sufficient evidence brought on record that he was business man and carrying business of selling poultry birds.

6. It is further submitted that even minimum income would be more than Rs. 8000/= per month if calculated on the basis of Minimum Wages Act of West Bengal. He was a businessman and his actual income was Rs. 10,000/-. He also relied a judgment reported in **Royal Sundaram Alliance Insurance Co. Ltd. Vs. Sulekha Mondal (Adhikary) and Others.**¹ Where the Hon'ble High Court accepted the annual income of the deceased, who was a quack Doctor, at Rs. 1, 08,000/- per annum. The minimum Rs. 9,000/- income should be considered in the instant case. Apart from that, the claimant is also entitled to future prospects and general damages. Accordingly, he prays for enhancement of compensation amount after calculating the actual income, future prospects as well as interest and general damages in view of the proposition

¹ **2019 (3) T.A.C. 68 (Cal)**

laid down by the Hon'ble Supreme Court in **Pranay Sethi's case.**

7. On the other hand, learned advocate appearing on behalf of the respondent/insurance company vehemently argued that the learned Tribunal has rightly assessed the income of the victim as Rs. 3,300/= when claimant failed to prove actual income of the victim. Only filing sale delivery challans are not sufficient to accept his actual income of Rs.10, 000/-. The interest was not allowed by the Ld. Tribunal because the Ld. Tribunal attributed the delay in proceeding upon the appellant/claimant. Therefore, he is not entitled to get interest on the awarded sum. In alternatively, he, on his fairness, submitted that income of the victim may be taken as Rs. 5,000/- per month. The deceased was a businessman but he did not produce any document to prove his actual income was Rs. 10,000/-. So at best Rs. 5000/- may be considered as income of the deceased per month. Apart from that, in view of the judgment pronounced by the Hon'ble Supreme Court, the

claimant is also entitled to get general damages and future prospects.

8. Having heard the rival submissions of the parties and on perusal of the record, this Court finds there is no dispute regarding date, time and manner of accident and death of the victim caused due to motor traffic accident. This Court has to decide only those issues pointed out by the parties. It appears from the judgment that the Ld. Tribunal has assessed the income of the victim as notional income Rs. 3,300/- when he failed to produce any document to support the deceased's income. It is true claimant fails to prove the actual income of the victim with cogent evidence and if he fails then Court has no option but to take a notional income but that should be reasonable. If this Court considers the judgment reported in **Laxmi Devi vs. Md. Tabbar and Anr.**² Where the Hon'ble Supreme Court held that when the claimant failed to prove the income of the victim, then Rs. 3,000/- may be accepted as notional income in the year 2008. In the said judgment, the

² 2008 (2) T.A.C. 394 (SC)

Hon'ble Supreme Court further held that even an unskilled labour could have earn Rs. 3,000/- per month. In the instant case accident took place in the year 2020, even if in respect of unskilled worker, if a sum of Rs. 200/- per day could be reasonable in the year 2020. Therefore, his income can be safely accepted as Rs. 6,000/- per month. Regarding future prospects and General Damages, it is well settled proposition laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi's Case**. Accordingly, claimant is also entitled to get compensation towards future prospects and general damages.

9. So far as interest is concerned, I do not find any cogent reason why the Tribunal attributed the laches/delay on the part of the claimant though it is settled provision of law that interest should be allowed from the date of filing claim application till realization. It is admitted fact that claimant has proved manner of accident and the said accident was due to negligent driving of the driver of the offending vehicle. In such a situation, the claimant was compelled to file this claim

application for compensation when the owner or Insurance Company did not come forward to admit the accident and to pay the compensation. The interest would not be awarded as penalty but it is only accretion of the fund/capital. In **Rekha Dutta & Ors. vs. Ram Avatar Lohia & Anr.**³, Division Bench of this High Court held that:

*“In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of **Alok Shanker Pandey vs. Union of India and Ors reported in AIR 2007 SC 1198:***

It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back

³ **2009 (3) TAC (Cal) 783**

the principal amount but also the interest thereon to B.
(Emphasis supplied)

10. In view of the above facts, the claimant is also entitled to get interest from the insurance company from the date of filing claim application till final realization of compensation amount.

11. There is no dispute regarding the manner of calculation of multiplier as 17 because the victim was between the age group of 26 to 30 years.

12. It is submitted that the claimant has received only the awarded sum of Rs 4, 06,600/=.

13. This Court does not find any substance in submission made by Ld. Advocate for the appellant/claimant that the victim income may be taken as Rs. 9,000/- per month in view of judgment cited hereinabove as the victim was not a professional like quack Doctor.

14. Keeping in mind of the above observations, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 6,000/-
Total annual income (6,000/- X 12)	Rs. 72,000/-
Less: deduction 1/2 of the total Annual income (towards personal and living expenses)	Rs. 36,000/-
Total income after deduction	Rs. 36,000/-
Use of Multiplier as per age group 26 to 30 years (Rs. 36,000/- X 17)	Rs. 6,12,000/-
Add: General Damages	Rs. 70, 000/-

Total Compensation	Rs. 6,82,000/-
Less Compensation already received	Rs. 4,06,600/-
Enhanced amount	Rs. 2,75,400/=

15. Thus, the appellant/claimant is entitled to get total enhanced compensation to the tune of Rs. 2,75,400/= (Rupees two lakhs seventy five thousand four hundred only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 01.02.2020 till final payment.

16. The respondent no. 1-Insurance Company is directed to deposit the total enhanced compensation amount i.e. Rs. 2,75,400/- along with the interest as indicated above and interest on the awarded compensation amount as awarded by the learned Tribunal in the same manner, if not paid earlier, by way of cheque in the name of appellant before the Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri -cum-

Motor Accident Claims Tribunal Judge, Jalpaiguri within a period of eight weeks from date.

17. Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri -cum- Motor Accident Claims Tribunal Judge, Jalpaiguri upon deposit of the amount and interest as indicated above, shall release cheque in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on total awarded amount, if not already paid.

18. The impugned judgment and award of the learned Tribunal dated 30.03.2023 is hereby modified to the aforesaid extent.

19. With the above observations, the appeal being **FMA No. 24 of 2023** stands disposed of.

20. There shall be no order as to costs.

21. All connected applications, if any, stand disposed of. Interim order, if any, stands vacated.

22. Let copy of this judgment and order along with lower court records, if received, be forwarded to the learned Tribunal for information.

23. Parties shall act on a server copy of this judgment and order obtained from the official website of High Court at Calcutta.

24. 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