

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 450 of 2011

(FMAT 697 of 2010)

Smt. Lipika Dey & Anr.

Vs

The Oriental Insurance Company Ltd. & Anr.

For the Appellants : Mr. Niranjana Maity.

**For the Respondent No. 1/
Insurance Company** : Mr. Rajesh Singh.

**For the Respondent No.2/
Owner** : None.

Hearing concluded on : 17.09.2024

Judgment on : 27.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the Judgment and Award dated 9th March, 2010 passed by Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court at Alipore, 24 Parganas (South) in Motor Accident Claim Case No. 188 of 2009, **under Section 166 of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

“.....On 27.05.2007 at about 9 p.m., the victim Debasish Dey was returning to his house on foot when he was dashed by a vehicle No. WMT-5290 being driven in rash and negligent manner near Dabur Gate, Narendrapore causing fatal injuries to his person and he died on the spot. Hence, this claim.....”

3. Shyamalendu Ghosal /O.P. No. 1, Owner of the offending vehicle and the Oriental Insurance Co. Ltd./O.P. No. 2 contested the case by filing separate written objections denying all the material allegation made in the claim application.
4. The claimants have examined **five witnesses** and proved relevant documents, which were marked **Exhibits 1 to 7.**
5. **The tribunal finally held as follows :-**

“.....MACC No. 188 of 2009

Dated 9th March, 2010

.....The evidence adduced with regard to the income of the deceased is not believe worthy. I have no hesitation in holding that the petitioner failed to prove the income of the deceased. But even a day labourer earns Rs. 2,000/- pm. At least these day and therefore, the deceased may be deemed to have income of Rs.24,000/- per annum.

Having come to this finding, I proposed to calculate the amount of compensation as follows :-

Rs. 16,000/- X 16 = Rs. 2,56,000/-

Petitioners are also entitled to Rs. 9,500/- by way of funeral expenses, loss of consortium and loss of estate. So petitioners are entitled to a total compensation of Rs. 2,65,500/- beside interest @ 6% from the date of filing application till realization on the aforesaid amount of compensation u/s 166 M.V. Act but this amount includes interim compensation u/s 140 M.V. Act, if any.....

Sd/-
Tribunal Judge, 4th Court,
Alipore, South 24 Parganas.....”

6. Being aggrieved, the claimants have preferred the appeal on the ground that :-

The learned tribunal did not grant ‘Just Compensation’ inspite of there being sufficient evidence in favour of the claimants.

7. Considering the materials and evidence on record, the following is evident:-

- i) The deceased used to do various kind of jobs and earn certain amounts from each of them, the **highest being Rs. 3,100/- per month** as an Electrician Consultant. The Tribunal accepted Rs. 2000/- per month as his income.

But considering that the accident occurred in the year 2007, his income be taken as **Rs 3000/- per month.**

- ii) Age of the deceased be taken as **36 years** as his date of Birth is 23.10.1970 as seen from **Exhibit 7 (Admit Card)** and as

such **Multiplier 15** is applicable. (*Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*)

- iii) **Future prospects** be taken at **40%** of established income. (*National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680*)
- iv) The initial number of claimants being three **(3)**, **1/3rd** be deducted towards personal expenses of the deceased. (*Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)*).
- v) General damages of **Rs. 70,000/-** under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000 to be added.** (*National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)*). General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

8. Thus the **“Just Compensation”** in this case would be as follows :-

Monthly Income	Rs. 3,000/-
Annual Income (3,000 x 12)	Rs. 36,000/-
Less : 1/3rd towards personal and living expenses	Rs. 12,000/-
	Rs. 24,000/-
Add : Future prospects @ 40% of the annual income of the deceased	Rs. 9,600/-
	Rs. 33,600/-
Multiplier x 15 (33,600 x 15)	Rs. 5, 04, 000/-

Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	Rs. 84,000/-
Total amount:-	Rs. 5, 88, 000/-

9. Admittedly, the Claimants have received the amount of compensation of **Rs. 2,65,500/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 3, 22, 500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
10. Taking into consideration, the amount already received by the Claimants/Appellants, the **Respondent No. 1/Insurance Company** shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the claimant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
11. **The appeal being FMA 450 of 2011/FMAT 697 of 2010 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
12. All connected applications, if any, stand disposed of.
13. Interim order, if any, stands vacated.

14. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)