

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 583 of 2020

Minor Anurag Sarkhel & Anr.
v.
Oriental Insurance Co. Ltd. & Ors.

Mr. Jayanta Kumar Mandal
Mr. Sayantan Rakshit

... for the appellants/claimants.

Ms. Gopa Das Mukherjee

... for the respondent no.1/insurance
company.

Heard on: September 18, 2024.

Judgment on: September 18, 2024.

Ananya Bandyopadhyay, J:- The learned advocates for the appellants/claimants and the respondent No.1/insurance company are present.

The instant appeal has been filed by the appellants/claimants agitating against the impugned award dated 19th July, 2019 passed by the learned Judge, Motor Accident Claim Tribunal, Bakura in disposing of the MACC Case No.24 of 2017.

The learned advocate for the appellants/claimants submitted the Learned Tribunal erred in not considering the amount to be computed regarding the aspect of "future prospect". The learned advocate for the appellants/claimants further disputed the notional income of Rs. 30,000/- per month to have been

considered by the Learned Tribunal in assessing the yearly income of the deceased.

The deceased victim incurred an accident on 01.11.2015 at about 2.10 p.m. at Sonamukhi Bishnupur metal road near Bhatra under the jurisdiction of Bishnupur police station, District Bankura, while the victim was returning home from Joyrambati in a vehicle being (Bolero) bearing registration No. W.B. 68N/3543 which collided with the offending vehicle bearing registration No. WB. 39A/6001 approaching in rash and negligent manner at a high speed from the opposite direction. Instantly, the victim expired on spot.

The Learned Tribunal disposed of the issues framed and on appreciation of both oral and documentary evidence and considering the notional income of the victim to be Rs. 3000/- per month assessed the compensation amount vide judgment and award dated 19th July, 2019 has been challenged in the present appeal.

The occurrence of the accident, the driving licence, route permit and other ancillary issues have not been opposed by the learned advocate for the respondent Nos. 1/insurance company. However, the victim lady being a 'tailor' and could have earned a sum of Rs. 5000/- per month at the relevant time when the accident occurred which could not be improbable.

Considering the observations of the Hon'ble Apex Court Pranay in *National insurance company Ltd. Vs. Pranay Shetty & Anr¹* and *Sarala Verma & Ors. Vs. Delhi*

1 2017(4)TAC 673(S.C)

*Transport Corporation & Anr.*² The impugned award of Rs. 4,12,500/- is modified as follows:

Monthly Income	Rs. 5000/-
	X 12
Annual Income	-----
	Rs. 60,000/-
Future Prospect to be added(40%)	+ 24,000/-
	Rs. 84,000/-
Less: Personal expenses 1/3 rd	28,000/-

Multiplier to be “17”	Rs. 56,000/-
	X 17

Add: Convention Head 10%	Rs. 9,52,000/-
(70,000+7000)	Rs. 77,000/-

	Rs. 10,29,000/-
Less awarded amount	Rs. 4,12,500/-
	Rs. 6,16,500/-

It was further submitted by both the learned advocates as aforesaid that the appellants/claimants have received a sum of Rs. 4,12,500/-. The appellants/claimants are entitled to receive the balance amount of Rs. 6,16,500/- at the rate of 6% per cent per annum from the date of filing of the claim application (27.11.2015) till the date of actual realization.

The respondent Nos. 1/insurance Company is to deposit the balance amount of Rs. 6,16,500/- along with interest at the rate of 6 % per cent per annum as aforesaid before the office of the learned Registrar

² (2009) 6 SC 121

General, High Court Calcutta within eight weeks from the date of passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present appellants/claimants as mentioned in the impugned award dated 19th July, 2019 passed by the learned Judge, Motor Accident Claim Tribunal, Bakura in disposing of the MACC Case No.24 of 2017 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court fees.

The learned tribunal had granted the liberty to the respondent Nos.1/insurance company to recover the entire amount of compensation from the owner of the offending vehicle.

The owner of the offending vehicle appeared before the Learned Tribunal and had filed a written statement. However, he did not appear to proceed further in the tribunal. The observation of the learned tribunal with regard to the liability of the respondent Nos. 1/insurance company to realize the amount of compensation from the owner of the offending vehicle in case there had been a violation of the policy condition is not interfered with. The impugned judgment and award is modified to the extent as stated above.

The instant appeal is disposed of accordingly.

The Trial court records be sent down to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)