

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 2054 of 2014

(FMAT 421 of 2010)

Tuhina Bandyopadhyay & Anr.

Vs.

The National Insurance Company Ltd. & Anr.

For the Appellants : Mr. Uday Sankar Chattopadhyay,
Ms. Rajashree Tah,
Ms. Trisha Rakshit.

**For the Respondent No. 1/
Insurance Company** : Mr. Sanjay Paul,
Ms. Jaita Ghosh.

Hearing concluded on : 24.06.2024

Judgment on : 02.07.2024

Shampa Dutt (Paul) , J.

1. The present claim under Section 166 of the Motor Vehicles Act has been preferred by the claimant/appellant being aggrieved with the judgment and order dated 28.10.2009 passed by the learned Judge, MAC Tribunal, 2nd Court, Burdwan under MAC Case No. 64 of 2008.

2. The Facts:-

“on 03.06.2008 at about 13.15 hours victim Amitava was proceeding to his house at village Gopalbera from his service centre Meral P.H.C. under Mahishbati B.P.H.C. by riding his own motor cycle through Arambag-Burdwan Road and at that time the case motor cycle no. WB-42L/6086 being driven in rash and negligent manner dashed against the motor cycle of the victim coming from opposite side, resulting which, serious injuries was caused to the victim and he died on the same date.”

3. The owner of the case motor cycle **did not contest this case**, but the insurer of the motor cycle, the opposite party National Insurance Company Ltd. **contested this case** by filing written statement and denying all material allegations made in the claim petition with further contention that the claim is excessive and without any basis.

4. The claimants examined three witnesses and proved relevant documents in support of their claim. The opposite party did not adduce any evidence.

5. **Considering the materials on record and evidence on record, the learned Tribunal held as follows:-**

“MAC Case No. 64 of 2008

Dated: 28.10.2009

..... The victim was aged 36 years as per Police Morgue Report in the name of the victim. So, multiplier 16 as per 2nd schedule of 163A of the Motor Vehicle Act is to be adopted in this case.

To my estimation, therefore, the claimants are entitled to get compensation of Rs.79,128/- x 16 + Rs.9,5000/- (towards funeral expenses, loss of consortium and loss of estate)= Rs.12,75,548/- as just compensation in this case along with interest @7% per annum on the said amount from the date of filing of this case till final payment and the opposite party National Insurance Company Ltd is liable to pay the same to the claimants.

Sd/-

Judge, MAC Tribunal, 2nd Court, Burdwan"

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

That the learned Tribunal did not consider the proper income of victim and also the compensation under other heads to which the claimants are entitled under the law.

7. From the materials and evidence on record, it appears that:-

- a) The age of the victim at the time of accident was **36 years** (police report). So the **multiplier of 15** is applicable. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121**)
- b) At the time of accident, the victim was attached to Mahishbati B.P.H.C, Raina as Pharmacist. Certificate dated 12.06.2008 vide Memo No.274 is the last drawn pay issued

by Block Medical Officer of Health, Raina-I Block, Burdwan.

- c) It appears from the certificate that the gross pay of the deceased was **Rs.11,043.00** and on deduction of Rs.110/- as professional tax, **the net income is Rs.10,933/-** and the victim **was in Government Service.**
- d) **Future prospect** will be **50%** of the salary, the victim being 36 years of age and having a permanent Government Job **(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680).**
- e) Deduction for personal expenses will be **1/3rd**, there initially being two claimants. **(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (Supra))**
- f) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of consortium and funeral expenses **(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. 10,933/-
Annual Income (10,933x 12)	Rs. 1,31,196/-
Less : 1/3rd towards personal and living expenses	Rs. 43,732/-
	Rs. 87,464/-
Add : Future prospects @ 50% of the	Rs. 43,732/-

<i>annual income of the deceased</i>	
	Rs. 1,31,196/-
Multiplier 15 (1,31,196/- x 15)	Rs. 19,67,940/-
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. 20,51,940/-

9. Admittedly, the Claimants/Appellants have received the amount of compensation of Rs. 12,75,548/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimant is now entitled to the **balance amount of compensation of Rs. 7,76,392/- 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 Claimant, upon satisfaction of her identity and payment of ad-valorem Court fees, if not already paid.

11. **The appeal being FMA 2054 of 2014/FMAT 421 of 2010 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

12. No order as to costs.

13. All connected applications, if any, stand disposed of.

14. Interim order, if any, stands vacated.

15. Copy of this judgment be sent to the learned Tribunal.

16. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)