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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 136 of 2023

Ratna Shil Pramanik & Ors.

-Vs-

National Insurance Co. Ltd. & Anr.

For the Appellants/claimants : Mr. Jayanta Mondal
Mr. Sayantan Rakshit

For the respondent/insurance co. : Mr. Rajesh Singh

Heard on : 14.08.2024

Judgment on : 14.08.2024

Ananya Bandyopadhyay, J. :-

1. The learned advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The instant appeal has been filed challenging the judgment and order dated 27th June, 2019 passed by the learned Judge, Motor Accident Claims Tribunal-cum- 3rd Court at Balurghat, Dakshin Dinajpur in MAC Case No.10 of 2017.
3. The learned advocate for the appellants/claimants submitted that an application under Section 166 of the Motor Vehicles Act had been filed in connection with an accident, which occurred on 21st September, 2016 at about 9.00 hours. At the relevant time, the victim was hit by an

offending vehicle being Motor Cycle bearing registration no.WB-62-E-6908 while he was standing in front of his poultry shop at Gangarampur near a bridge. The offending vehicle approaching at a high speed in a negligent manner, lost control and incidentally hit the victim who subsequently succumbed to his injuries at Dishari Nursing Home at Malda.

4. The learned advocate for the respondent/insurance company did not dispute either the occurrence of the accident or the validity of the driving licence, route permit etc. The learned advocate for the appellants/claimants submitted that the income of the victim was considered to be Rs.3,000/- by the learned Tribunal in absence of relevant documents to support of his claim of Rs.9,000/- per month. It was further submitted that the learned Tribunal erred in considering the multiplier to be 15 instead of 16 with regard to his age of 34 years at the time of his demise.
5. The learned advocate for the respondent/insurance company opposed the submissions of the learned advocate for the appellants/claimants.
6. The learned Tribunal disposed of the issues framed and on appreciation of the evidence passed the impugned

judgment awarding the compensation amount under challenge. In deciding the issue nos.5 and 6, the learned Tribunal considered the age of the deceased/victim as mentioned in the post-mortem report to be 36 years. The post-mortem report marked as Exhibit-4 reveal the age of the deceased to be 36 years whereas the Exhibit-5, i.e. the Voter Card of the deceased mentioned the age of the deceased to be 19 years as on 01.01.2001 indicating the age of the victim to be 34 years at the time of the accident. Since the post-mortem report is not based on a proper investigation with regard to the assessment of the victim's age, the Voter Identity Card being a document prior in existence than the post-mortem report is given precedent in terms of its veracity as to the age of the victim is concerned. The evidence of PWs 1 and 2 referred to the poultry shop at Gangarampur belonging to the victim. Presumably, the victim was engaged pursuing a poultry business and his monthly income can be more than Rs.3,000/- per month. The monthly income of the victim is considered to be Rs.5,000/-.

7. Considering the observations of the Hon'ble Supreme Court reported in National insurance company Ltd. Vs. Pranay

Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi

Transport Corporation & Anr.², the impugned award of Rs.

4,75,000/- is modified as follows:-

Monthly Income	Rs. 5,000/-
	x 12
Annual Income	-----
	Rs. 60,000/-
Add Future Prospect 40%	
	Rs. 24,000/-
Deduction $\frac{1}{4}$	-----
	Rs. 84,000/-
	Rs. 21,000/-

	Rs. 63,000/-
Multiplier by "16"	
	X 16

	Rs. 10,08,000/-
Add: Consortium Head	Rs. 70,000/-
(40,000+ 15,000+15000= Rs. 70,000/-)	-----
	Rs. 10,78,000/-
Less: Principal Award Received	Rs. 4,75,000/-

	Rs. 6,03,000/-
Entitlement	Rs. 6,03,000/-

8. It was further submitted by both the learned advocates as aforesaid that the appellants/claimants had already withdrawn a sum of Rs. 4,75,000/- along with interest at the rate of 6% per annum evidently on 07/11/2019 as per

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

² (2009) 6 SC 121

the order no.21 recorded by the learned Tribunal in MAC Case No.10 of 2017.

9. Accordingly, the appellants/claimants are entitled to receive the balance amount of Rs. 6,03,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
10. The Learned Advocate for the respondent/insurance company is to deposit the balance sum of Rs. 6,03,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
11. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award granted by the learned Judge, Motor Accident Claims Tribunal-cum- 3rd Court at Balurghat, Dakshin Dinajpur in MAC Case No.10 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

12. The instant appeal is disposed of accordingly.
13. The lower court records be sent down through the Special Messenger at the cost of the appellants/claimants. The cost accordingly be deposited immediately. The Department on such deposition of cost is directed to send down the lower court record from the concerned tribunal.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)