

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 1405 of 2015

(FMAT 588 of 2014)

Smt. Madhabi Mondal

Vs.

United India Insurance Company Ltd. & Anr.

**For the Appellant/
Claimant** : Mr. Krishanu Banik,
Mr. Tathagata Banik.

**For the Respondent No.1/
Insurance company** : Mr. Parimal Kr. Pahari.

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

Hearing concluded on : 23.09.2024

Judgment on : 23.09.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by claimant/appellant against the Judgment and Award dated 25th day of March, 2014 passed by the learned Judge, Motor Accident Claims Tribunal and District and Sessions Judge, Purba Medinipur (hereinafter called as the Learned Tribunal Judge) in M.A.C. Case No. 224 of 2010, **under Section 166 of the M.V. Act.**
2. **FACTS :-**

“.....On 06.02.2010 victim Nayan Kumar Mondal was coming to his working place as a pillion rider of motorcycle being No. WB-12U/0836 and when he reached at village-Rakshachak on National High Way No. 41 then in front of the approach road of Madras Cement Limited, the said motorbike stopped. The deceased Nayan Mondal was standing on the mud and moram portion of the road to go to his factory and at that time the offending bus bearing registration No. WB-33/5194 which was proceeding towards Mecheda dashed him in a rash and negligent manner with excessive speed and ran over him. The driver of the motorbike Ramjoy Yadav also sustained injury. Both Nayan Kumar Mondal and Ramjoy Yadav were taken to Popular Nursing Home, Mecheda, where Nayan Kumar Mondal expired at 4.40 p.m. due to his injuries. Post mortem was held in respect of the dead body of deceased Nayan Kumar Mondal at District Hospital, Purba Medinipur. The motorbike was damaged. According to the petitioner, the alleged accident occurred due to rash and negligent driving on the part of the driver of the offending bus. The deceased was a healthy, young man and he used to earn Rs.13,516/- per month from his service at the time of accident.

The petitioner was totally dependent upon the income of the deceased. After the death of deceased the applicant has suffered financial and mental pain.....”

3. The opposite party no. 1, Sk. Bulbul Rahaman, the owner of the offending vehicle, did not contest the case and as such, the case heard ex parte against him.
4. The opposite party no. 2, the United India Insurance Company Ltd., the insurer of the offending vehicle, contested the case by filing written statement. In its written statement the opposite party no. 2 challenged the maintainability of the case on various grounds. The involvement of the offending vehicle No. WB-33/5194 was totally denied by the opposite party no. 2. The opposite party no. 2 claimed that at the relevant point of time the deceased was travelling by motorbike without helmet. According to the opposite party no. 2, the owner and insurer of the motorbike are necessary parties in the instant case. Lastly, the insurer prayed for dismissal of the case with cost.
5. **On completion of hearing, the learned Tribunal held as follows :-**

“.....M.A.C. Case No. 224 of 2010

Dated: 25th March, 2014

In the above situation, I have no other alternative but to adopt the principle of notional income to ascertain the income of the deceased. In view of the various decisions of Hon'ble Supreme Court, the annual notional income of a person is Rupees 36,000/- per annum. From the materials on record it appears that the deceased died as a bachelor. In this connection the learned Advocate for the opposite party No. 2 has placed his reliance on the decision of Hon'ble Supreme Court reported in 2011(1) TAC 4 (SC) and submitted that 50 per cent would be deducted as personal and living expenses of the bachelor and remaining 50 per cent as the contribution to the family as the deceased died leaving behind his mother only.

In view of the above after deduction of 50 per cent towards personal and living expenses the total contribution of the deceased to his family

would be Rs.18,000/- per annum. After applying multiplier eleven, the total compensation comes to Rs.1,98,000/-. The amount of compensation includes funeral expenses and loss of estate. As such, further sum of Rs.4500/- may be added to the total amount of compensation. As such, the amount of compensation comes to Rs.2,02,500/- (Rupees Two lack two thousand five hundred). The amount of compensation includes interest. As such, the petitioner is entitled to get interest @ 9 per cent per annum over the compensation amount from the date of filing of the case till deposit is made.

**Sd/-
Judge,
Motor Accident Claims Tribunal
District & Sessions Judge,
Purba Medinipur.....”**

- 6. Being aggrieved, the Claimant preferred this appeal on the ground :-**

That the learned tribunal did not grant ‘just compensation’ inspite of evidence on record.

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

- i) Though the claimants before the Tribunal had produced some documents in respect of the income of the deceased during hearing, the same has not been proved in accordance with law and as such was not accepted by the learned Tribunal. Even though in the deposition of PW 3, the said documents have been marked as Exbt. 8, 9 and 10 the documents themselves have not been marked.**

- 8. Learned Tribunal has thus not accepted the income of the victim as Rs. 13,516 per month (Ext. 8, 9 & 10) on the following findings:-**

“.....M.A.C. Case No. 224 of 2010

Dated: 25th March, 2014

.....In order to prove the income of the deceased petitioner examined P.W. No. 3, Pradip Mukherjee. From his evidence it appears that deceased Nayan Kumar Mondal was an employee of Madras Cement Ltd., Kolaghat and he used to get a salary of Rs.13,516/- per month before his accident. From the cross-examination of P.W. No. 3 it appears that the service of deceased was not temporary in nature. He was a permanent employee though he was on probation. In paragraph 7 of his affidavit-in-chief the P.W. No. 3 submitted certain documents regarding the offer of payment of deceased Nayan Kumar Mondal monthly attendance register for the month of April, 2010, May, 2010, June, 2010 of Madras Cement Limited, Kolaghat and prayed for marking of those documents as Exhibits. The pay-statement of Nayan Kumar Mondal has not been produced by P.W. No. 3.

P.W. No. 3 neither in his examination-in-chief nor in his cross-examination disclosed his identity on the basis of which he was deposing before the court. During his cross-examination he has admitted that he has not brought the official register and there is no such endorsement on the document which he had produced to the effect that those documents were prepared from the official record. It is doubtful under what capacity P.W. No. 3, Pradip Mukherjee, has deposed before the court in support of the income of the deceased. Nowhere in his evidence he has disclosed his relationship with Madras Cement Limited, Kolaghat. Except his verbal statement regarding the income of the deceased, no other document has been produced by the petitioner to prove his income. Moreover, during his cross-examination P.W. No. 3 has admitted that there is no such endorsement on the document which he has produced before the court to the effect that those documents were prepared from the official record. In the above situation, it would not be reasonable and justified to place reliance on the evidence of P.W. No. 3, regarding the income of the deceased.

In the above situation, I have no other alternative but to adopt the principle of notional income to ascertain the income of the deceased. In view of the various decisions of Hon'ble Supreme

Court, the annual notional income of a person is Rupees 36,000/- per annum.....

**Sd/-
Judge,
Motor Accident Claims Tribunal
District & Sessions Judge,
Purba Medinipur.....”**

9. It appears from the evidence of P.W. 3, that the tribunal marked the said documents as Exhibit 8, 9 & 10, but the documents have themselves not been marked nor considered in view of the findings above.
10. **P.W. 3 (examination in chief) on 20.02.2014, is as follows:-**

*“.....Three documents namely, authenticated copy of letter of appointment of Nayan Kumar Mondal, pay-slip for the month of April, 2010 of Nayan Kr. Mondal and pay-roll Section of Madras Cement Ltd., Chennai, have been marked as **Exhibits -8, 9 and 10 respectively.....”***
11. **As the difference in the income taken by the tribunal and the documents marked is substantial,** the claimants have prayed that the matter be remanded, so that the claimants get an opportunity to prove the said documents in accordance with law, in view of the findings of the tribunal.
12. It is surprising to note that even though the said documents were marked as exhibits, (without objection), then what stopped the tribunal to accept the said documents as evidence.
13. But considering the findings of the tribunal as above in respect of the said documents, interest of justice requires, that the case be sent back on **limited remand**, to also enable the insurance company to get the opportunity to cross examine the witness (P.W. 3) to that extent only.

14. Thus the case be remanded to the tribunal, with the direction that the tribunal shall grant opportunity to the parties to further examine P.W. 3 or any other duly authorized person holding the relevant post presently, on the documents already marked Exhibit 8, 9 and 10 respectively, on giving an opportunity of cross examination to the Insurance Company.
15. **The learned tribunal shall dispose of the case afresh, in accordance with law, within three months from the date of this order.**
16. **FMA 1405 of 2015/FMAT 588 of 2014 is accordingly disposed of (remanded).**
17. Trial Court Record, if received, be sent back at once.
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)