

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 861 of 2023
Rashida Khatun @ Roshida Bibi
v.
United India Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman

... for the appellant/claimant.

Mr. Sanjay Paul
Ms. Jaita Ghosh

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

Heard on: 27th September, 2024.

Judgment on: 27th September, 2024.

Ananya Bandyopadhyay, J:-

The learned advocates for the appellant as well as respondent Nos. 1 are present.

The instant appeal has been preferred by the appellant/claimant against the judgment and award dated 17th September, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Krishnanagar, Nadia in M.A.C. Case No.303 of 2018.

The learned advocate for the appellant/claimant disputed the monthly income of Rs.3000/- per month considered by the learned tribunal stating that the victim at the time of the accident worked as a 'tailor' earning of Rs.5,000/- per month.

The learned advocate for the respondent Nos.1/insurance company vehemently opposed the contention of the learned advocate for the appellant/claimant in the absence of any documentary evidence the monthly income of the victim has been rightly assessed to be Rs.3,000/- per month.

The learned advocate for the appellant/claimant submitted that the calculation of the compensation of the amount as granted by the learned Tribunal had been erroneous without following the principle stipulated in the observations of the Hon'ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr¹* and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.²*

The victim suffered 45% partial disablement, which occurred on 12th January, 2018 at about 9.30 hours due to rash and negligent driving of the offending vehicle which bearing registration No.WB-57B/3161 whereby the victim, who was standing on the left side of the Pucca road was hit by the aforesaid offending vehicle approached from Debogram side. The victim suffered fracture of her leg incapacitating her to move freely and to perform her 'tailoring work'.

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 as a 'tailor' could not have been in a position to provide documentary evidence with regard to her daily earnings. The monthly income of a 'tailor' in the year of 2018 can be Rs. 5000/- per month considering the fiscal index.

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

The impugned award of Rs. 4,50,000/- is modified as follows:

Monthly Income	Rs. 5000/- x 12
Annual Income	Rs. 60,000/-
Disability 45%	Rs. 27,000/-- Rs. 2,700/-
Future Prospect to be added(10%)	----- Rs. 29,700/-
	X 17
Multiplier to be “17” (age)	Rs. 5,04,900/- Rs. 1,50,000/-
Medical expenses	Rs. 6,54,900/- Rs. 1,50,000/-
Non-pecuniary Damages	----- Rs. 8,04,900/- Rs. 4,50,000/-
Less Award	----- Rs. 3,54,900/-
Entitlement	

The learned advocate for the appellant/claimant submitted that the appellant/claimant to have already withdrawn a sum of Rs.4,50,000/-. The appellant/claimant is entitled to a sum of Rs.3,54,900/- along with 6% interest per annum to be paid from the date of filing of the application that is 7th December, 2018 under Section 166 of the Motor Vehicles Act till the date of its realization.

The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs.3,54,900/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the

² (2009) 6 SC 121

learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Krishnanagar, Nadia in M.A.C. Case No.303 of 2018 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court's fees.

The instant appeal is disposed of accordingly.

The Trial Court Records shall be sent down to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m

(Ananya Bandyopadhyay, J.)