

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 704 of 2014

(FMAT No. 721 of 2013)

With

CAN 4 of 2024

With

COT 45 of 2013

The New India Assurance Company Ltd.

Vs

Smt. Shila Bagdi & Ors.

**For the Appellant /
Insurance Company**

: Ms. Gopa Das Mukherjee.

For the Claimants/Respondents

**: Mr. Krishanu Banik,
Mr. Tathagata Banik.**

Hearing concluded on

: 18.06.2024

Judgment on

: 27.06.2024

Shampa Dutt (Paul), J.:

1. The present Claim appeal has been preferred against the Judgment and Award passed on 06th October, 2012 passed by the Judge, Motor Accident Claims Tribunal, Special Judge-cum-Additional District Judge, Durgapur, Burdwan in M.A.C. Case No. 39 of 2010 (M.A.C.C.44 of 2009), **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The Facts:-**

“On 29.07.2008 at about 10.30am (10.30 hrs.) while Mihir Chandra Bagdi (now deceased) was coming from his residence at village- Shalgara P.O. and P.S.- Barjora, Dist.- Bankura and was proceeding towards Durgapur Barrage by riding his bi-cycle, and when he reached near Pratappur bus-stop, at that relevant time one Ambassador car bearing no. BMT-7167 came from the same direction and hit the back side of the bicyclist Mihir Chandra Bagdi in a very rash and negligent manner. As a result the victim was knocked down and sustained serious injuries on his person and his bi-cycle was also completely damaged. After the accident local people came to the spot and shifted him to DPL Hospital immediately, where the victim Mihir Chandra Bagdi died on the same date.

That the accident took place due to the rash and negligent driving of the driver of the Ambassador car bearing no. BHT-7169 and the driver of the Ambassador car was solely responsible for the accident. At the relevant time of accident, the victim deceased was working as technician at Durgapur Project Ltd. and he was aged only 43 years.”

3. **In the written statement the opposite party New India Assurance Co. Ltd. stated as follows:-**

- i. *That the driving license and the Insurance Policy as alleged are not legally valid.*
 - ii. *That the alleged accident was caused due to the fault of the deceased and not due to the rash and negligent driving of the driver of the alleged Ambassador car bearing No. BHT – 7169.*
 - iii. *The deceased Mihir Chandra Bagdi was trying to cross the road ignoring Traffic Rule and suddenly came in front of the Ambassador car bearing BHT- 7169 and thus denied the liability of the Insurance Company.*
4. The claimants examined four witnesses, and proved the certified copies of FIR, Charge Sheet, Seizure List. Post Mortem Report, Admit Card of the victim, pay Statement, Insurance policy etc. which were marked as **Exhibits 1 to 8**. There was no evidence adduced by the opposite party.
5. **Considering the materials and evidence on record, the Learned Tribunal held as follows:-**

“M.A.C. Case No. 39 of 2010
M.A.C. Case No. 44 of 2009

Dated: 06.10.2012

P.W. 4 is Assistant Manager of the Institution where victim used to work has deposed that gross salary was Rs. 12,100.50/-. Considering the facts of the case and the Judicial decision, this court is of the view that considering future prospect, income of the victim should be considered Rs. 13,000/- per month. The annual income comes to Rs. 1,56,000/-. 1/3rd should be deducted on account of personal expenses. As the victim was 43 years, the annual dependency loss comes to Rs. 1,04,000/-.

As the victim was 43 years old, multiplier of 15 could be applied. Hence the total dependency loss comes to Rs. 15,60,000/-. Further the petitioners are to get Rs. 9,500/- on account of loss of estate, loss of consortium and funeral expenses. Hence the total amount of compensation comes to 15,69,500/- (Rupees Fifteen Lac, Sixty Nine Thousand Five Hundred) which the petitioners are entitled to from the opposite parties.

**Sd/-
Judge, Special Court
-cum-
Additional District Judge, Durgapur”**

6. Being aggrieved by the said order of compensation, the Opposite Party/Appellant/Insurance Company has preferred this appeal on the grounds:-

- i. That the Learned Tribunal did not consider that the driver of the offending vehicle did not have any driving license.*
- ii. That the widow of the deceased has been given employment on compassionate ground and also receives pension.*
- iii. That applying the multiplier of 15 is not in accordance with law and thus the award is liable to be set aside, modified, altered etc.*

7. From the material and evidence on record, the following is evident:-

- i) The victim was working as a Technician Grade –II with DPL and was **42 years old** on the date of incident. (**Exhibit 5 and 6**) and as such **multiplier of 14** is applicable. (**Sarla**

Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121)

- ii) The Victim's Salary for the month of July, 2008, (the victim died on 29.07.2008) was Rs. 12,100.60/- (**Exhibit 7**). On deducting professional Tax of Rs. 110, it comes to about **Rs. 12,000/-** per month (rounded off).
- iii) About the non existence of Driver's driving license, there was no evidence adduced by the Insurance Company/Appellant in that respect before the tribunal.
- iv) **Future prospect** will be **30%** of Salary, as the victim had a permanent Job. (***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***)
- v) **Deduction will be 1/3rd** as there were three claimants before the tribunal (***Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)***).
- vi) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the 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:-

<i>Monthly Income</i>	<i>Rs. 12,000/-</i>
<i>Annual Income</i>	<i>Rs. 1,44,000/-</i>

<i>(12,000 x 12)</i>	
<i>Less : 1/3rd towards personal and living expenses</i>	<i>Rs. 48,000/-</i>
	<i>Rs. 96,000/-</i>
<i>Add : Future prospects @ 30% of the annual income of the deceased</i>	<i>Rs. 28,800/-</i>
	<i>Rs. 1,24,800/-</i>
<i>Multiplier x 14 (1, 24, 800 x 14)</i>	<i>Rs. 17, 47, 200/-</i>
<i>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)</i>	<i>Rs. 84,000/-</i>
<i>Total amount:-</i>	<i>Rs. 18, 31, 200/-</i>

9. Admittedly, the Appellants/Insurance Company has deposited the amount of compensation of Rs. 15, 69, 500/- in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs. 18,31,200/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.**
10. Taking into consideration the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the balance amount, along with the interest on the total compensation amount, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, after payment of the amount for loss of consortium to the Claimant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

- 11. The appeal being FMA 704 of 2014/FMAT 721 of 2013 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. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)