

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side**

**Present: - Hon'ble Mr. Justice Subhendu Samanta.**

**FMA 834 of 2013  
Smt. Uttara Gorai & Ors.  
Vs.  
Oriental Insurance Co. Ltd. & Ors.**

|                           |          |                                |
|---------------------------|----------|--------------------------------|
| <b>For the appellant</b>  | <b>:</b> | <b>Mr. Krishanu Banik</b>      |
| <b>For the respondent</b> | <b>:</b> | <b>Mr. Parimal Kumr Pahari</b> |
| <b>Heard on</b>           | <b>:</b> | <b>22.1.2024</b>               |
| <b>Judgment on</b>        | <b>:</b> | <b>24-1-2024</b>               |

**Subhendu Samanta, J.**

1. The instant appeal has been preferred against the judgment and award dated April 10, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 2<sup>nd</sup> Court, Bankura , in M.A.C. case No. 35/44 of 2011/2009.

2. The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company. The claim was contested by the Insurance Company by filing written statement.

3. After hearing the parties, the learned Tribunal has awarded a sum of Rs.2,85,000/- in favour of the claimants and directed the present respondent no.1 to pay the compensation.

4. Being aggrieved by and dissatisfied with the impugned award, the present application has been preferred by the claimant for enhancement of the compensation.

5. Learned advocate for the appellants submits that award passed by the learned Tribunal is erroneous. The learned Tribunal has assessed the income of the deceased erroneously as a notional income of Rs.24,000/- per annum. The deceased was a driver of Bolero car who sustained severe injuries in an accident in the year 2008. The driver of the vehicle used to earn more than Rs.5,000/- at the relevant point of time. The claim application was filed stating the income of the deceased to be Rs.4,500/-. Evidence was adduced by the widow of the deceased stating that the income of her husband was Rs.4,500/- per month. Learned Tribunal has erroneously assessed the compensation by fixing annual income of the deceased to be Rs.24,000/-.

6. He further argued that the multiplier adopted by the learned Tribunal. In this case, 17 which is erroneous according to the observation of the Hon'ble Supreme Court in **Sarala Verma**. The applicable multiplier would be 18 considering the age of the deceased to be 25 years.

7. The claimants are also entitled to get the future prospect as well as the general damages according to the observation of Hon'ble Supreme Court passed in **Pranay Shetty**. He prayed for just and proper compensation.

8. Learned advocate appearing on behalf of the Insurance Company submits that no documents of income has been produced before the learned Tribunal. The owner or the multiplier of the deceased also did not depose to support the claim of the claimants. Thus, the learned Tribunal has committed no error in assessing income of the deceased. However, he admitted that the multiplier adopted by the learned Tribunal is erroneous.

9. Heard the learned advocate and perused the materials on record, the fact of this case is very peculiar. On 5.11.2008 when the deceased was travelling Bolero car along with some passengers bearing no. WB 38V/9261 and when they reached at Kharkata Junble(Forest), they found some wooden logs were placed upon the road. They stopped their car, at the time 7/8 docoits being armed with stick, daggers, axe etc. attacked them and snatched their belongings. At the time, the offending truck bearing no. WB 37B/2006 which was running in high speed, rash and negligent manner and dashed the bolero car from behind in a high force. By such, driver of the bolero car i.e. present deceased with other passengers sustained severe injuries and on the way to the hospital the deceased died.

10. The learned Tribunal has fixed the income of the deceased notionally. It is true that the deceased was a driver of the Bolero car. The learned Tribunal must have followed the observation of the Hon'ble Supreme Court passed in **Smt. Kaushnuma Begum & Ors. Vs. The New India Assurance Co. Ltd.** reported in **ACJ 2001(428)**, wherein the Hon'ble Supreme Court has held that to assess the compensation in pursuance of any relevant evidence. The statement of widow can be believed. The Hon'ble Supreme Court has adopted the view in **Gurmit Kaur & Anr. Vs. State of Haryana & Ors.** reported in 2000 ACC(11) 329.

11. In this case, it appears that due to such accident Bishnupur P.S. case no. 115/2008 dated 5.11.2008 was started. The police has conducted the investigation and after such investigation police has submitted charge-sheet against the driver of the offending vehicle(Truck). The entire statement of the police shows that the deceased was a driver of the Bolero car. The driving licence of the deceased was also seized. It appears that the learned Tribunal has not properly gone through the police papers and the driving licence placed before him

at the time of trial and came to an erroneous conclusion. The income of the deceased cannot be fixed notionally as the occupation of the deceased as a driver, has sufficiently proved.

12. In this case, by virtue of Hon'ble Supreme Court passed in **Kaushnuma Begum(Supra)** has to be adopted. I am of the view, the monthly income of the deceased has to be calculated of Rs.4,500/-. The claimants are also entitled to get the future prospect which is 40% to the established income of the deceased and general damages according to the observation of the Hon'ble Supreme Court passed in **Pranay Shetty**. According to the observation of the Hon'ble Supreme Court passed in **Sarala Verma** the applicable multiplier would be 18.

13. Considering the first all aspect, the award passed by the learned Tribunal need be modified. The total compensation is recusted below:

|                                             |                        |
|---------------------------------------------|------------------------|
| 1. Monthly income                           | : Rs.4,500/-           |
| 2. Annual income (4500 X12)                 | : Rs.54,000/-          |
| 3. Add Future prospect 40%                  | <u>: Rs.21,600/-</u>   |
|                                             | : Rs.75,600/-          |
| 4. Deduction 1/3 <sup>rd</sup> personal exp | : Rs.50,400/-          |
| 5. Multiplier 17 (50,400 X 17)              | : Rs.8,56,800/         |
| 6. General Damages                          | <u>: Rs.70,000/-</u>   |
|                                             | : Rs.9,26,000/-        |
| 7. Less awarded amount                      | <u>: Rs.2,85,000/-</u> |
| <b>Balance award</b>                        | <b>: Rs.6,41,800</b>   |

14. After calculation, the total award comes to Rs.9,26,000/-. The claimant has already received an award of Rs.2,85,000/-. The balance award comes to Rs.6,41,800/-

15. The award shall carry 6% interest per annum from the date of filing of the claim application i.e. 6.4.2009.

16. The Insurance Company is directed to pay the balance award together with interest as directed above through the officer of the Learned Registrar General, High Court, Calcutta within six weeks from this date.

17. on such deposit, the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the claimant vide three equal account payee cheques.

18. The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

19. The learned Tribunal shall act upon the production of the certified copy of this award to receive the deficit court fees if any.

20. The LCR be sent down immediately to the office of the learned Tribunal.

21. Accordingly, FMA 834 of 2013 is disposed of.

23. Connected applications, if any, are also disposed of.

24. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**

