

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 1047 of 2013
CAN 1 of 2013 (Old No. CAN 7764 of 2013)
Asma Khatoon & Ors.
Versus
National Insurance Co. Ltd. & Anr.**

Mr. Krishanu Banik
Mr. Tathagata Banik

...for the Appellant/claimant.

Mr. Parimal Kumar Pahari

...for the Respondent No.1/insurance company.

Heard on: November 26, 2024.

Judgment on: November 26, 2024.

Ananya Bandyopadhyay, J:- Both the Learned Advocates representing the appellants/claimants and the respondent No.1/insurance company are present.

The instant appeal had been filed against the judgment and award dated 24th August, 2012 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 8th Court, Alipore, South 24 Parganas in M.A.C. Case No. 75 of 2004.

The instant appeal was filed by the claimants with regard to the death of the victim aged about 25 years sustaining an injury out of an accident which occurred at the crossing of Meyo Road and Dufferin Road, Kolkata on 23rd September, 2003 at about 7.35 hours with the involvement of the offending

vehicle wherein the victim was a passenger being a mini bus bearing registration No. WB 199/6164 which collided with another vehicle being Tata Sumo bearing registration No. WB 03A/2164.

The learned tribunal disposed of the issues framed through a judgment dated 24th August, 2012 awarding a sum of Rs. 2,72,000/- along with an interest at the rate of 8% per annum till realization to be paid in equal share to either of the appellants/claimants of the deceased victim.

Heard the rival contentions of the learned advocates for the appellants/claimants as well as the respondent No.1/insurance company.

It was submitted by the Learned Advocate for the appellants/claimants that the instant appeal has been filed being aggrieved by the income of Rs. 2000/- considered by the tribunal contrary to the claim of the claimants/appellants of Rs. 4000/- being the monthly income of the victim during his life time. The Learned Advocate representing the appellants/claimants further submitted that the Learned Tribunal erred in considering the “future prospect” at the rate of 10% instead of 40%.

The Learned Advocate for the respondent No.1/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, the route permit, the insurance policy, etc.

Since the other components have not been challenged barring the element of income and “future prospect”, this Court restricts itself only to the extent of considering the monthly income of the victim at the time of the accident. The P.W.1 wife of the deceased victim during her cross examination submitted that the victim was dealing in scrap papers earning a sum of Rs. 4000/- per month.

The claimants could not have possibly produced any document to prove the earning to be Rs. 4000/- dealing in scrap papers. At the relevant time of accident in the year 2003 considering the fiscal index of the notional income can be considered as Rs. 3000/- per month.

Considering the observations of the Hon’ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr*¹ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*², the impugned award of Rs. 2,81,500/- is modified as follows:

Monthly Income	Rs. 3000/-
Annual Income	Rs. 36,000/-
Future Prospect to be added(40%)	Rs. 14,400/-

	Rs. 50,400/-
1/3 rd Deduction personal expenses	Rs. 16,800/-

Multiplier to be “18”	Rs. 33,600/-
	X 18

General Damages	Rs. 6,04,800/-
	Rs. 84,000/-

Less Award	Rs. 6,88,800/-
	Rs. 2,81,500/-
Entitlement	Rs. 4,07,300/-

The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 2,81,500/-. The appellants/claimants are entitled to a sum of Rs. 4,07,300/- along with 6%

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

² (2009) 6 SC 121

interest per annum to be paid from the date of filing of the application till the date of its actual realization.

The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,07,300/- 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 four weeks from the date of its actual realization.

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 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 8th Court, Alipore, South 24 Parganas in M.A.C. Case No. 75 of 2004 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

The instant appeal and connected application are disposed of accordingly.

The TCR 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.)