IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3910 of 2016

(FMAT 633 OF 2016)

Smt. Mousumi Jana & Ors.

Vs

National Insurance Company Ltd. & Anr.

With

FMA 2296 of 2016

National Insurance Company Ltd.

Vs

Smt. Mousumi Jana & Ors.

For the Appellants/ Claimants	:	Mr. Krishanu Banik, Mr. Tathagata Banik.
For the Respondent No.1/ Insurance Company	:	Mr. P.K. Pahari.
For the Respondent No.2/ Owner	:	None.
Hearing concluded on	:	19.08.2024
Judgment on	:	23.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the Judgment and Award dated 13th day of March, 2015 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur, in M.A.C. Case No. 6/129 of 2012/2011, **under Section 166 of the Motor Vehicles Act.**

2. **THE FACTS :-**

> *"On 05.01.2011 at about 7.20 p.m. when the victim was going towards Mecheda by riding a motor cycle from Deulia Bazar through NH6 then near Bhanga gate he stopped his motor cycle due to some mechanical problem and just then one Maruti Omni car bearing No. WB34Y/8687 dashed him and as a result the victim sustained grievous injury on his head and died on spot.* ***The said accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle bearing no. WB34Y/8687 (Maruti Omni).*** *The victim was a service holder and he was the only earning member of the family and his age was 45 years while such accident took place and he used to earn Rs. 34,021.61 per month. Due to such death untimely his family members, the present claimants suffered mental sufferings a lot as well as they had to face acute economic crisis."*

3. The opposite party/owner did not contest the case. Whereas the Insurance Company appeared and filed the written objection denying the allegation raised in the petition. It was stated therein that there was no rash and negligent driving of the driver of the said offending vehicle. The accident took place due to carelessness of the victim and due to rash driving of the victim riding in the motor cycle, so neither the owner nor the Insurance Company are liable to pay any compensation.

4. The Claimants examined **four witnesses** and proved relevant documents which were marked **Ext. 1 to 13.**

5. The Opposite Party/Insurance Company examined **two witnesses**.

6. **The tribunal finally held as follows :-**

"M.A.C. Case No. 6/ 2012
M.A.C. Case No. 129 /2011

Dated: 13.03.15

.... So, though in the F.I.R. the vehicle was written as unknown yet the evidence of O.P.W.2 made it concrete that actually such accident took place due to fault on the part of the driver of the said car. Regarding the burden of payment of compensation it is the rule that if the vehicle is found under coverage of any insurance and if it is not established that the owner violated any terms in that case the liability is upon the Insurance Company. Here exbt.4 is adduced to that effect from where I find that the said car was under coverage of O.P. No. 2 Company and so the liability should be upon the Insurance Company. The age of the victim is stated as 45 years when the accident took place. As per Voter's identity card his age was in the year 1995 was 28. So, when the accident took place his age was about 44 plus. In the Post mortem report his age is written as 45 years. In the exbt. 9 (Pay Slip) the date of birth of the victim is written as on 20.01.65. So his age at the time of his death was above 45 years. Regarding his income and occupation the petitioners have filed numbers of documents which are marked herein as exbts. 7 to 11. As per pay certificate (exbt.9) I find that he drew salary of Rs. 34,000/- (around) and he used to pay Income Tax of Rs. 3,143/- per month. So at the time of calculation of his total income the tax will be deducted and thus the total income will be Rs. 34,000/- - Rs. 3,143/-=Rs. 30,857/- X 12 = Rs. 3,70,284/-. Out of that 1/3rd will be deducted. So the amount remains on the basis the loss of income can be estimated is Rs. 3,70,284/- - Rs.1,23,428 = Rs. 2,46,856/-. He died at the age of 45, so the multiplier will be 13. Thus the amount will be Rs. 2,46,856/-X 13=Rs. 32,09,128/-. In addition to the Rs. 5000/- will be added as funeral costs and other costs and as he died only at age of 45 so the wife will get a compensatory amount of Rs. 10,000/-. So the total amount of compensation will be

Rs. 32,24,128/- Thus O.P. No. 2 is directed to pay the compensation amount of Rs. 32,24,128/- towards the claimants along with interest at the rate of Rs. 6% per annum from the date of its filing till its recovery while it is directed to pay the award within one month from the date of order. The O.P. No.2 is directed to pay the total amount of compensation amongst the claimants in the following manner :- Rs. 3,00,000/- is to be given to the claimant No.4 whereas Rs. 15,00,000/- is given to the claimant No.1 along with interest whereas the rest amount along with interest be given in equal halves to the minor claimants Nos. 2 & 3 respectively.

Sd/-
Judge
M A C Tribunal,
2nd Court,
Tamluk, Purba Medinipur"

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

i) Charge Sheet **(Exhibit 1/2)** has been filed against offending vehicle having valid policy **(Ext. 4)**, for rash and negligent driving under **Section 279/304A/427 IPC.**

ii) Victim was aged **45 year (Voter Card Ext.5), (PM report Ext.2)** and **(Ext.9 pay slip).** So **multiplier of 14** shall be applicable. **(*Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iii) Income of the victim as per **Exhibit 9** (Payslip) P.M. is **Rs. 34,000/- - Rs. 3143 (Income Tax) = Rs. 30, 857/- per month.**

iv) **Future prospect** shall be **30%** of Income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

v) Number of (initial) Claimants being 4, **1/4th** is to be deducted towards personal expenses. ***(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: Rs.15,000/- Loss of Consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-. ***(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:-

Monthly Income	*Rs.* 30, 857 /-
*Annual Income (*30, 857 *x 12)*	*Rs. 3,70,284/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 92,571/-*
	Rs. 2,77,713/-
*Add : Future prospects @ **30%** of the annual income of the deceased*	***Rs. 83,313.9/-***
	Rs. 3,61,026.9/-
***Multiplier x 14** (**3,61,026.9 x 14**)*	***Rs. 50, 54, 376.6/-***
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)	***Rs. 84,000/-***
Total amount:-	***Rs. 51, 38, 376.6/-***
Total Round off amount:-	***Rs. 51,38,377/-***

9. Admittedly, the Claimants have received an amount of compensation of **Rs. 32, 24, 128/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 19, 14, 249/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, as the insurance company has also filed an appeal being FMA 2296 of 2016.**

10. Taking into consideration the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, 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 installments, **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 3910 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

12. FMA 2296 of 2016 is treated on today's list and taken up for hearing in presence of both sides. By the instant appeal, the appellant/National Insurance Company has preferred the appeal on the ground that the offending vehicle as held by the learned tribunal was not involved in the accident in this case.

13. **It appears from the charge sheet (Exbt. 1/2)** that only the driver of **Maruti Car No. WB34Y/8687 (offending vehicle)** has been chargesheeted. As such the submission of the learned counsel for the insurance company/appellant holds no substance the finding of the tribunal being in accordance with law and accordingly there being no merit in the said appeal, **FMA 2296 of 2016 stands dismissed.**

14. All connected applications, if any, stand disposed of.

15. There will be no order as to costs.

16. Interim order, if any, stands vacated.

17. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)