IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 702 of 2014

(FMAT 1167 of 2013)

Aloka Majhi & Ors.
Vs.
United India Insurance Company Ltd. & Anr.

For the Appellants	:	Mr. Uday Sankar Chattopadhyay, Ms. Trisha Rakshit, Ms. Aishwarja Datta.
For the Respondent No. 1/ Insurance Company	:	Mrs. Sucharita Paul.
Hearing concluded on	:	19.06.2024
Judgment on	:	28.06.2024

Shampa Dutt (Paul), J.:

1 The present claims/appeal by the claimant has been preferred against the Judgment and Award dated 24th July, 2013 passed by the Judge, 5th M.A.C. Tribunal, Burdwan, in M.A.C. Case No. 50 of 2011 & M.A.C. Case No. 183 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

2 **The facts of the incident in this case is:-**

> *"That on 31.01.2011 at 1.30 P.M. the offending vehicle being no.WB-42 M/7902 dashed the victim Sukumar Majhi in rash and negligent manner on Khandaghosho- Badulia road in between Chagram and Kule causing bleeding injuries on his person and he succumbed to his such injury at Burdwan Medical College & Hospital on the following day and police case was started on the said occurrence."*

3. The Claimants/Appellant state that the victim was the sole earning member of his family and claimed compensation of Rs. 5,50,000/-.

4. The owner of the offending vehicle did not contest the case.

5. The Insurance Company/Respondent No. 1 resisted the claim by filing written statement, wherein, he denied and disputed all the allegations made in the claim petition, and, inter alia, stated that the F.I.R. has been lodged after delay of about one month and the claimants are not on entitled to the compensation as prayed for as the insured did not comply with the terms and conditions of the insurance policy. The insurer also obtained leave of the court to participate into the merit of the case by filing an application U/S/ 170 of the M.V. Act.

6. The claimants examined three witnesses and proved relevant documents marked (**Exhibit – 1 to 5).**

7. The Insurance Company/ Respondent did not adduce any evidence.

8. Considering the materials on record, the Learned Tribunal granted compensation on the following findings:-

"M.A.C. Case No. 50 of 2011
M.A.C. Case No. 183 of 2011

Dated: 24th July 2013

I am of the view that the deceased being a daily labour at least used to earn Rs. 100/- per day and since in the Indian Standard a daily labour cannot get job for more than 25 days on average in a month, I assess his monthly income as Rs. 2500/- which comes to Rs. 30,000/- per annum. After deducting 1/3rd thereof the amount comes to Rs. 20,000/- per annum.

Now, so far age of the victim is concerned, it appears from his Voter's Identity Card that he was aged 54+ years on the day of accident and therefore, he comes within the age group of 50 and 55 and hence, appropriate multiplier in this case would be 11. Now, multiplying the said amount of Rs. 20,000/- with 11 the amount comes to Rs. 2,20,000/-. Besides that petitioners are also entitled to the sum of Rs. 4500/- for loss of estate and funeral expenses. In addition to that petitioner no.1 Aloka Majhi would get extra sum of Rs. 5000/- for loss of consortium. The petitioners are also entitled to the interest @ 7% per annum over the said amount.

Sd/-
5th M.A.C. Tribunal
Burdwan"

9. Being aggrieved, this appeal has been preferred by the Claimants on the following ground:-

That the Learned Tribunal wrongly assessed the income, multiplier and other compensations as provided under the law.

10. From the materials on record, it is evident that:-

i) The involvement of the offending vehicle has been proved by P.W. 1 & 3 (eye witness), the seizure list and charge-sheet. **(Exhibit 1/2 and 1/1)**

ii) Delay in lodging the FIR has been duly explained.

iii) The Post Mortem report **(Exhibit 3)** proves that the victim died of injuries in the road traffic incident in this case.

iv) The owner not denying the involvement of the offending vehicle, proves the case of the claimant ***(The New India Assurance Co. Ltd. Vs. Mita Samanta & Ors., FMA 524 of 2008/(2010) 1 WBLR (Cal) 137).***

v) The deceased was an unskilled "Mutia Mazdoor" (Porter), a daily labour. No proof of income has been proved. Thus the income of the victim is fixed at Rs.4000/- per month. The annual income comes to Rs. 48,000/- (4000x12).

vi) The age of the deceased from the Voter Card and P.M. report appears to be more than **54 years**. Thus, **multiplier of 11** is applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121).***

vii) The vehicle had valid insurance (**Exhibit- 2).**

viii) **The number of Claimants before the tribunal being (3) three, 1/3rd is to be deducted towards personal expenses.**

ix) **Future prospects** at **10%** of income to be added. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

11. 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%).

12. Thus, the compensation to which the claimants are entitled are as follows:-

Monthly Income	*Rs. 4,000/-*
Annual Income (4,000 x 12)	*Rs. 48,000/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 16,000/-*
	Rs. 32,000/-
*Add : Future prospects @ **10%** of the annual income of the deceased*	***Rs. 3,200/-***
	Rs. 35,200/-
***Multiplier x 11** (35,200 x 11)*	***Rs. 3,87,200/-***
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. 4,71,200/-***

13. Admittedly, the Appellants/Claimants have received the amount of compensation of Rs. 2, 29, 500/- 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. 2,41,700/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

14. 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, after payment of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

15. **The appeal being FMA 702 of 2014/FMAT 1167 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

16. No order as to costs.

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

18. Interim order, if any, stands vacated.

19. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)