

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 143 of 2016

(FMAT No. 1356 of 2015)

Namita Giri & Ors.

Vs

United India Insurance Company Ltd. & Ors.

For the Appellants : Mr. Krishanu Banik.

**For the Respondent No.1/
Insurance Company** : Mr. Sanjay Paul,
Ms. Jaita Ghosh.

**For the Respondent No.2 & 3/
Owner/Proforma Respondent** : None.

Hearing concluded on : 22.08.2024

Judgment on : 23.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Claimants against the judgment and award dated 21st day of August, 2015 passed by Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Contai, Purba Medinipur (hereinafter called as the Learned Tribunal Judge) in M.A.C. Case No. 153/150 of 2013/2005, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **THE FACTS :-**

“.....On 26.06.2013 at about 07.00 pm the driver of the involved vehicle (Truck) bearing registration No. W.B.-33/7241 drove the same in rash and negligent manner along Itaberia-Henria pitch road with a very high speed and when it reached near United Bank of India, Bhupatinar, the driver lost his control over the said vehicle and dashed the victim while the victim was walking by the side of the road keeping left towards Susila More. As a result the victim sustained severe injury and expired on that day. Hence, the petition for compensation.....”

3. The **O.P. No.2 /United India Insurance Company Ltd.** contested the case by filing written statement denying all the material allegation. The O.P. no.2 denied the manner of accident. He denied that the accident was caused due to rash and negligent act of driver of the offending Truck but that the accident was caused due to the fault of the victim. They also denied the monthly income of the deceased and further stated the compensation claimed is arbitrary and excessive. The claim petition is bad in law and is liable to be rejected with cost.

4. The **O.P. no.1/owner** did not contest the case in spite of valid service of notice. Hence, the case was heard ex-parte against him.
5. To prove the case, the **Claimants** have examined **three witnesses** and produced some documents which have been marked as **Ext.1 to Ext.10**. On the other hand, the O.P. no.2 did not produce any oral or documentary evidence in support of his defence.
6. **Finally, the tribunal held as follows :-**

“Dated 21st August, 2015

.....Now, if the monthly income of the deceased be Rs. 6000/-, then his annual income would be Rs. 6000/- X 12 = Rs. 72000/-. After deducting 1/3rd of personal expenses of the deceased from the annual income, it stands as Rs. 48000/-. After multiplying 17 to Rs. 48,000/- it stands as Rs. 48,000/- X 17=Rs. 8,16,000/-. The claimant No.1 being the wife of the deceased she is entitled to get Rs. 5000/- as loss of consortium. The claimants are also entitled to get Rs. 2000/- for funeral expenses and Rs. 2500/- for loss of estate. Thus, the total amount stands as Rs. 8,16,000/-+Rs. 5000/-+Rs. 2000/- + Rs. 2,500/- = Rs. 8,25,500/-

*According to this Tribunal, the said amount of compensation of **Rs. 8,25,500/-** is just and adequate.....*

Sd/-
Judge, MAC Tribunal
Addl. Dist Judge, 2nd Court,
Contai, Purba Medinipur.”

7. **Being aggrieved the claimants have preferred this appeal on the ground :-**

*That the Learned tribunal did not grant ‘**Just Compensation**’ in the present case as per the provisions of Motor Vehicles Act, to which the claimant is entitled.*

8. From the materials including the evidence on record, it appears :-

- i) The tribunal has taken the income of the deceased (skilled mason) as Rs. 6000/- p.m. There being no cross appeal by Insurance Company, income be accepted as **Rs. 6000/-** per month.
- ii) Age of the deceased being **33 years, multiplier 16** shall be applicable. (*Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*)
- iii) **Future prospect** shall be **40%** of established Income. (*National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680*)
- iv) Number of claimants being **3, 1/3rd** of the victim's income is to be deducted towards his personal expenses. (*Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)*).
- v) 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%).

9. Thus the “Just Compensation” in this case would be as follows :-

Monthly Income	Rs. 6,000/-
Annual Income	Rs. 72,000/-

(6,000 x 12)	
Less : 1/3rd towards personal and living expenses	Rs. 24,000/-
	Rs. 48,000/-
Add : Future prospects @ 40% of the annual income of the deceased	Rs. 19,200/-
	Rs. 67,200/-
Multiplier x 16 (67,200 x 16)	Rs. 10,75,200/-
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. 11,59,200/-

10. Admittedly, the Claimants have received the amount of compensation of **Rs. 8,25,500/-** 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. 3,33,700/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
11. 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 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.

- 12. The appeal being FMA 143 of 2016/FMAT 1356 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
13. All connected applications, if any, stand disposed of.
14. There will be no order as to costs.
15. Interim order, if any, stands vacated.
16. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)