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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 396 of 2024

Sahida Bibi & Ors.

-Vs-

The National Insurance Co. Ltd. & Anr.

For the Appellants/claimants : Mr. Amit Ranjan Roy

For the respondent No.1/insurance co. : Ms. Gopa Das Mukherjee

Heard on : 22.08.2024

Judgment on : 22.08.2024

Ananya Bandyopadhyay, J. :-

1. The learned advocates for the appellants/claimants as well as the respondent No.1/insurance company are present.
2. The instant appeal has been filed against the judgment and award dated 28th July, 2023 passed by the Motor Accident Claims Tribunal, Fast Track Court-II, Howrah, in MAC Case No.28 of 2016.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed by the appellants/ claimants concerning the death of the victim on 27/12/2015 at about 11.40 a.m. at the junction of NJ-6 (Bombay Road) near Nowpala (Motimala) being hit by the

offending vehicle being a Bus bearing registration no.WB-29A/0504.

4. The learned advocate for the respondent No.1/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, driving licence, route permit and other ancillary issues.
5. The learned advocate for the appellants/claimants submitted the learned Tribunal had committed an error in considering the number of days of employment of the victim to be 20 in a month instead of 30 in a month. The learned Tribunal further did not grant the interest from the actual date of filing of the claim application till the date of actual realization of the compensation amount.
6. The learned Tribunal disposed of the issues framed upon appreciation of the evidence thereof, and conclusively determined the compensation to be awarded in the proportion as mentioned in the impugned judgment as follows: -

“The deceased left nine(9) dependents as claimants. Claimant No.1 is his wife and rest are his children. As such, the claimant No.1 is entitled to get (Rs. 8,53,680/9)+ 40,000/- = 1,34,854 whereas the rest of the claimants are entitled to get (Rs. 8,53,680/9) +(40,000/8) = 99,853/- each. Hence, the claimants namely Sahida Bibi, wife of the deceased is entitled to get Rs. 1,34,854/- and Saiful Jamadar, Abdul Sadek Jamadar, Sabir Jamadar sons of the deceased, Taslima Begam, Tanjila Khatun, Tajada Begam all are married daughters of the deceased are entitled

to get Rs. 99,853/-each along with interest @ 6% per annum from 08.12.2022 till the date of payment. Thus all issues are disposed of accordingly”.

7. The learned Tribunal had elaborately discussed the opinion of the Hon'ble Supreme Court as well as the Calcutta High Court with regard to a victim working in an unorganized sector to provide evidence of income. The victim working in an unorganized Sector whether skilled or unskilled will be governed by the statutory provisions and inability to provide any documentary evidence will not deter the appellants/claimants from being entitled to justifiable amount of compensation. The daily earning of the deceased to be Rs.300/- is just and proper. However, the learned Tribunal without any evidence cannot determine that the victim used to work 20 days in a month. The victim being a hawker was under no restriction or bound by any rules of service to be on holidays. Moreover, if the victim would have taken a day's break per week, his number days of working would be 26 in a month. None-the-less, the urge and requirement of the victim to pursue his livelihood as well as support his family might have propelled him to work 30 days a month and the same cannot be absurd, illogical or unreasonable. The monthly income of the deceased is, therefore, considered to be $\text{Rs.}300 \times 30 = \text{Rs.}9,000/-$.
8. The learned advocate for the respondent No.1/insurance company pointed out that the learned Tribunal has committed an error in considering the age of the victim to be 50 instead of 53 as

mentioned in the post-mortem report whereby the multiplier would have been 11 instead of 13. On perusal of the documents on record, it transpires that the Aadhar Card marked as Exhibit-4 denoted the date of birth of the victim to be 01.01.1965 thereby the age of the victim on the date of the accident should have been 52 years. Accordingly, the multiplier should be 11 in view of the decision of *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*¹ The impugned award of Rs. 1,34,854/- is modified as follows:-

Monthly Income	Rs. 9,000/-
	x 12
Annual Income	----- Rs. 1,08,000/-
Deduction ¼	Rs. 21,600/- -----
	Rs. 86,400/-
Add Future Prospect 10%	Rs.8,640/- -----
	Rs. 95,040/-
Multiplier by “11”	X 11 -----
	Rs.10,45,440/-
Add: Damages 20% (70,00/- + 14000/-)	Rs. 84,000/- -----
	Rs. 11,29,440/-
Less: Principal Award Received	Rs. 9,33,680/- -----
	Rs. 195,760/-
Entitlement	Rs.1,95,760/-

¹ (2009) 6 SC 121

9. It was further submitted by both the learned advocates as aforesaid that the appellants/claimants have already withdrawn a sum of Rs. 9,33,680/-. The date of filing of the claim application was on 08.02.2016 in the Court of learned District Judge at Howrah subsequently transferred to the learned Tribunal as foresaid for disposal.
10. The learned advocate for the appellants/claimants submitted that the learned tribunal granted interest at the rate of 6 % per annum to be paid from 08.12.2022 instead of 08.12.2016 i.e. actual date of filing of the claim application.
11. Accordingly, the appellants/claimants are entitled to receive the amount of interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization on the principal award of Rs. 11,29,440/-.
12. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 1,95,760/- along with 6 % per cent interest per annum from the date of filing of the claim application (adjusting the amount of interest already received from 08.12.2022) before the office of the learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order.
13. On receipt of the said amount, 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 Motor

Accident Claims Tribunal, Fast Track Court-II, Howrah, in MAC Case No.28 of 2016 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

14. The instant appeal is disposed of accordingly.

15. The trial court records be sent down to the concerned trial court forthwith.

16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)