IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 388 of 2024

(FMAT 81 of 2016)

Farida Begam & Ors.

Vs

Bajaj Allianz General Insurance Company Ltd. & Ors.

For the Appellants	:	Mr. Amit Ranjan Roy.
For the Respondent no. 1/ Insurance Company	:	Ms. Sucharita Paul.
For the Respondent No.2/ Reliance General Insurance Co. Ltd.	:	Mr. Sanjay Paul, Ms. Jaita Ghosh.
Hearing concluded on	:	12.06.2024
Judgment on	:	20.06.2024

Shampa Dutt (Paul), J.:

1. The present Appeal has been preferred against the Judgment and Award passed on 8th June 2015 by the Motor Accident Claims Tribunal, 1st Court, Hooghly in M.A.C. Case No.257 of 2011 **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts:-**

> *On 04.03.2011 at about 5.30 hours the victim – Sekh Rafik alias Sk. Rafik parked his vehicle W.B. 41C-3790 at the 'kanchha' portion of Durgapur Express Way near Chunnu Petrol Pump and he stood for nature's call at the said place. At the material time, a Lorry – W.B. 23B-7553 was proceeding in a rash and negligent manner and it dashed against the parked vehicle –WB41C-3790. As a result, the vehicle W.B. 41C-3790 capsized and fell in the road side ditch. The said victim also sustained severe injuries on his person and it caused his death.*
>
> *Rash and negligent driving on the part of the driver of the vehicle WB23B-7553 was the sole cause of this pathetic accident. Police also started a criminal case against the driver of the said vehicle and filed charge sheet u/s 279/304A/427 IPC in Gurap Police Station Case 23/11 dated 05.03.2011 under Sections 279/338/427/304A IPC.*

3. The legal representatives of the victim are, his wife, daughter and son, being the claimants/appellants here in.

4. The offending vehicle (lorry) WB 23B-7553 herein was insured with the Respondent no.2/Insurance Company, Reliance General Insurance Company, who has contested the case till the stage of appeal denying the claim of the claimants.

5. The Respondent No.1/Bajaj Allianz General Insurance Company Ltd. has also contested the case till the stage of appeal denying liability for the accident in this case, being the insurer of vehicle WB 41C-3790.

6. The Respondent No.2/Reliance General Insurance Company Ltd. has further contented that the offending vehicle though having a valid Insurance Policy was plying without valid permit and was not being driven by the owner or driver and as such having violated the terms and conditions of the Insurance Policy, the Insurance was not liable in any manner what so ever.

7. The claimants examined two witnesses, being the wife of the deceased (P.W.) and an eyewitness (P.W.2) who has stated that he saw the accident being caused by the offending vehicle, driven at high speed (rash and negligent manner).

8. The Respondent No.1 examined one witness. From the materials on record it appears that the victim was **aged 31 years** at the time of the accident, (as seen from the driving license of the victim, which has been seized). This also proves that the deceased was a **driver by profession.**

9. The Learned Tribunal applied multiplier of 17 and held the income of the victim to be Rs 4500/- per month, being a driver, having a driving license and finally granted compensation as follows:-

> *"In a death case the amount of compensation so arrived at shall be reduced by 1/3 towards the personal expenses of the deceased. Hence, his annual income will come to Rs. 36,000/-. With this amount 17 multiplier will be considered for which the compensation amount will come to Rs. 6, 12,000/-.*
>
> *Besides this, the claimants will be entitled to the funeral expenses to the extent of Rs. 2,000/-, loss of estate to the extent of Rs. 2,500/- and loss of consortium to the extent of Rs. 5000/-*

totaling to Rs. 9,500/-. Then the total compensation amount will come to Rs. 6,21,500/-. In addition to this amount petitioner/claimants are entitled to interest @ 7% per annum over the said amount of compensation from the date of filling of this case till actual realization."

10. Being aggrieved the present Appeal has been preferred on the following grounds :-

i) That the Learned tribunal was wrong in not considering the income of the victim as Rs. 7,500/- per month.

ii) The claimants further pray for interest on the enhanced awarded under Section 171 of the Motor Vehicles Act, 1988, from the date of claim application and other reliefs.

11. From the materials and evidence on record, the following is evident:-

a) The victim was **aged 31 years** at the time of the accident so **multiplier of 16 will be applicable.**

b) The driving license and the presence of only the victim near his vehicle proves that he was a **driver by profession** and thus a highly skilled worker. The tribunal has also held that the victim was a driver.

12. The profession of the victim has not been denied by the respondents nor have they preferred any cross appeal.

13. The vehicle in this case being the offending vehicle has not been denied by the owner and thus in view of the said stand of the owner and the evidence on record, the involvement of the offending vehicle in the accident in this case is proved. ***(The New India Assurance Co. Ltd. vs Mita Samanta & Ors., on 15th September, 2009).***

14. Thus the profession of the victim being a truck driver (highly skilled) in the year 2011 is proved and accepted.

15. ***Compared to other developed countries, truckers in India are poorly paid. Rules and regulations have been set up by the Government but improper implementation of laws has led to the unfortunate condition of truck drivers. Laws have been set under the Motor Vehicles Employees Act of 1961. According to these laws, a truck driver is eligible to a minimum salary of Rs. 5,000 and protection and some benefits in case of accidents. But in reality drivers are paid anything between Rs 1000 and Rs 3000. Truck drivers have to work for particularly long hours, that can stretch over days. It is a common exercise amongst transport enterprises to over-load trucks which again creates risks of overturning trucks.***

16. The minimum wage of a highly skilled transport worker (Driver) in the State of West Bengal worker in the year 2011, can thus be taken as Rs. 4500/- per month and is accordingly fixed at Rs. 4500/- per month.

17. The accident in this case occurred on 04.03.2011.

18. In the absence of a Salary Certificate, the minimum wage is applicable and is to be taken into consideration as **fixed Salary.** Considering the age of the victim to be 31 years, **multiplier of 16** is to be applied ***(Sarla Verma & Ors. Vs Delhi Transport Corporation & Anr., AIR 2009 SC 3104).***

19. Considering that the victim was aged about 31 years and on a fixed Salary (Minimum Wage), the claimants are entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors., 2017 (16) SCC 680).***

20. The claimants are also entitled to 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., 2017 (16) SCC 680).***

21. Accordingly the calculation of compensation is as follows:-

Monthly Income	*Rs. 4500/-*
Annual Income (4500 x 12)	*Rs. 54,000/-*
Less : 1/3rd towards personal and living expenses	*Rs. 18,000/-*
	Rs. 36,000/-
Add : Future prospects @ 40% of the annual income of the deceased	*Rs. 14,400/-*
	Rs. 50,400/-
Multiplier x 16 (50,400 X 16)	*Rs. 8,06, 400/-*
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/.	*Rs.70,000/-*
Total amount:-	***Rs. 8,76,400/-***

22. Admittedly, the claimants have already received the amount of compensation of Rs. 6,21,500/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are entitled to **balance amount of compensation of Rs. 2,54,900/- together**

with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

23. Taking into consideration the amount already received by the claimants, the Respondent No. 2/Reliance General Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, who shall release the amount in favour of the claimants in equal proportion after payment of the Balance 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.

24. The appeal being FMA 388 of 2024/FMAT 81 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

25. No order as to costs.

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

27. Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)