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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT(MV) 127 of 2023

CAN 1 of 2023

CAN 3 of 2024

National Insurance Company Ltd.

-Vs-

Paramita Naskar & Ors.

With

COT 93 of 2024

Paramita Naskar & Ors.

Vs

National Insurance Company Ltd.

For the Appellant/insurance co.	:	Mr. Rajesh Singh
For the respondents/claimants	:	Mr. Saswata Bhattacharyya
Heard on	:	07.08.2024
Judgment on	:	07.08.2024

Ananya Bandyopadhyay, J. :-

1. The instant appeal has been filed against the judgment and order dated 14th September, 2022 passed by the learned Motor Accident Claims Tribunal cum Additional District Judge, 14th Court, Alipore, South 24 Pargans in M.A.C. Case No. 29 of 2013.
2. The respondents/claimants had filed an application under Section 166 of the Motor Vehicles Act, 1988 before the learned tribunal claiming compensation for the death of the victim. On 22.09.2013 the victim succumbed to the injuries out of an

accident being hit by the offending vehicle being a Tata Sumo bearing No. WB-22U1547 on 14th May, 2012.

3. The learned advocates for the appellant/insurance company as well as the respondents/claimants are present before the Court.
4. The learned advocate for the appellant/insurance company submitted that the occurrence of the accident and the involvement of the offending vehicle are not disputed. The learned advocate for the appellant/insurance company contradicted the amount of Rs.1,20,000/- awarded by the learned tribunal as loss of consortium towards mother and two minor children of the victim. However, conceded to the sum of Rs. 40,000/- determined as spousal consortium to be justified. The learned advocate for the appellant/insurance company further submitted that the victim was aged about 42 years at the time of the accident and, therefore, the learned tribunal has erroneously considered to be 40 % in terms of the future prospects which otherwise would be Rs.25,000/- following the decision of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*
5. The learned advocate for the respondents/claimants submitted to have filed a cross objection being COT 93 of 2024 claiming enhancement of the monthly income of the deceased to be Rs 8,500/- per month instead of Rs. 4,449/- as considered by the learned tribunal. He further submitted that in respect of 1/4th of the income of the victim towards his personal expense the

learned tribunal had erroneously deducted 1/3rd of the income disregarding the fact of the victim having four dependents namely the wife, mother and two children and sought for a modification of the awarded sum to along with an interest of 9 % per annum. The learned tribunal while disposing of the claim application filed under Section 166 of the Motor Vehicles Act had considered the monthly income of the deceased victim to be Rs. 4,449/- in absence of any documentary evidence as well as corroborative oral evidence being guided by the rates stipulated in the provisions of Government of West Bengal for Minimum Wages Act and this Court is not inclined to interfere with the same.

6. Considering the observation of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*¹
7. The impugned award of Rs. 11,24,343.20/- is modified as follows:-

Monthly Income	Rs. 4,449/-
Add: Future prospect (25%)	Rs. 1112.25/-

	Rs. 5561.25/-
Annual Income	X 12

	Rs. 66,735/-
Less: ¼ for Personal Expenses	- 16,683.75
	- -----
	50,051.25/-

Multiplier to be "14"	Rs. 50,051.25/- X 14 -----
Medical Expenses	Rs.7,00,717.5/- +Rs. 2,36,740/- -----
Add: General Damages (Rs.70,000 + 20% Escalation)	Rs.9,37,457.5/- Rs. 84,000/- ----- Rs.10,21,457.5/-

8. The learned advocate for the appellant/insurance company submitted to have deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 18,53,743/- as per the challan filed by the learned advocate for the appellant/insurance company.
9. The office of the Registrar General, High Court at Calcutta is to deduct the entire amount inclusive of the awarded amount as aforesaid along with an interest of 6 % per annum on the same from the date of filing of the claim application till the date of realization, from the deposited amount in this Court vide the O.D. Challan No. 3231 dated 02.01.2024 and refund the balance amount through a cheque to the learned advocate for the insurance company for the accounts of the insurance company. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which was further

deposited in the nationalized bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on Rs. 10,21,457.50 is to be disbursed in favour of the claimants and the balance sum of interest to be refunded to the insurance company through distinct account payee cheques.

10. The instant appeal is disposed of accordingly.
11. The applications being CAN 1 of 2023 and CAN 2 of 2024 is also disposed of.
12. The interim order if any stand vacated.
13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)