

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.1823 of 2018

Shriram General Insurance Company Limited
vs.
Rubi Sarkar & Ors.

Mr. Rajesh Singh ... for the appellants/Insurance company

Mr. Subir Banerjee ... for the respondents/claimants.

Heard on: September 19, 2024.

Judgment on: September 19, 2024.

Ananya Bandyopadhyay, J:- The Learned Advocates for the appellant/insurance company as well as respondents/claimants are present.

The instant appeal has been filed by the appellant/insurance company agitating the impugned award dated 16.09.2017 passed by the learned Additional District & Sessions Judge, FTC-1 Alipurduar in MACC Case No.5 of 2014.

The Learned Advocate for the appellant/insurance company submitted that the accident occurred in the year 2013. The learned tribunal erred in considering the future prospect to be 50% instead of 40% and sum of Rs. 2,75,000/- was awarded towards general damages instead of cumulative of Rs. 70,000/- towards the general damages. The Learned Advocate for the appellant/insurance company disputed the monthly income of the deceased victim to be Rs. 5200/- as considered by the learned tribunal. According to the Learned Advocate for the appellant/insurance company, in the year 2013 in absence of any documentary evidence the victim working as a khalashi (helper of a driver in the offending vehicle) could not have been earned Rs. 5200/- per month.

The application under Section 166 of the Motor Vehicles Act was filed by the respondents/claimants claiming compensation for the death of the victim in an accident which occurred on 24.11.2013 at about 2.15 p.m. at Falakata road near brick field of Paropar area with the involvement of the offending bus which approached in a rash and negligent manner and resulting in the death of the victim who was employed as a ‘Khalashi’ in the said offending vehicle.

The learned tribunal disposed of the issues framed upon appreciation of evidence and granted compensation challenged herein.

The occurrence of the accident, involvement of the offending vehicle, the driving licence, route permit and other ancillary issues were not disputed by the Learned Advocate for the appellant/insurance company.

The monthly income of the victim could not have been proved through any documentary evidence as he worked as a ‘khalashi’ (helper of a driver in the offending vehicle). However, it will not be improbable for the victim as ‘khalasi’ to earn 4800/- per month considering the fiscal index on the date of accident.

Considering the observations of the Hon’ble Apex Court Pranay in *National insurance company Ltd. Vs. Pranay Shetty & Anr¹* and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.²*

The impugned award of Rs. 12,73,400/- is modified as follows:-

Monthly Income	Rs. 4,800/-
Annual Income	X 12

	Rs. 57600/-
Add Future Prospects (40%)	+ 23040/-

	Rs. 80640/-

1 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Less: 1/3 rd for Personal Expenses	Rs. 26,880/- -----
Multiplier to be "16"	Rs. 53,760/- 16 -----
	Rs. 7,56,000/- Rs. 77,000/- -----
Add: General Damages (10%)	Rs.8,60,160,- Rs. 84,000/- -----
	Rs. 9,44,160/-

It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 17,72,643/- as per the challan filed by the learned advocate for the Appellant/Insurance company. The Respondents/claimants have received the compensation amount of Rs. 12,73,400/-.

The office of the learned Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present claimants/respondent Nos.1 and 2 in the proportion as mentioned in the impugned judgment dated 16.09.2017 passed by the learned Additional District & Sessions Judge, FTC-1 Alipurduar in MACC Case No.5 of 2014 on proof of proper identification of the claimants /respondent Nos.1 and 2 subject to payment of *ad valorem* Court fees and refund the balance amount if any through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

The interest accrued 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. 9,44,160/-is to be disbursed in favour of the claimants/respondent Nos.1 and 2 and the balance sum of interest to be refunded to the Insurance Company through distinct account payee cheques.

The instant appeal being FMA 1823 of 2018 is disposed of.

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

c.m.

(Ananya Bandyopadhyay, J.)