

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.501 of 2024
CAN 1 of 2024

Nikhil Sau & Ors.
vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy

... for the appellants/claimants

Mr. Sanjay Paul
Ms. Jaita Ghosh

... for the respondent No.1/insurance company.

Heard on: December 9, 2024.

Judgment on: December 9, 2024.

Ananya Bandyopadhyay, J:-

The Learned Advocates representing the appellants/claimants as well as respondent No.1/insurance company are present.

The instant appeal has been preferred by the appellants/claimants against the judgment and award dated 22nd December, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, Fast Track Court-1, Tamluk, Purba Medinipur in M.A.C. Case No. 430 of 2021.

An application under Section 166 of the Motor Vehicles Act had been filed due to the death of the victim in an accident which occurred on 20.07.2021 at about 8.00 p.m. with the involvement of the offending vehicle of motorcycle bearing registration No. WB-30X/2504 which hit the victim at Kannyagurukul

bus stop near Haldia Mechada Pitch road. The victim subsequently succumbed to her injuries. The learned advocate representing the appellants/claimants submitted the learned tribunal had erroneously considered the income of the victim Rs. 5000/- per month since she had been dealing in grocery business.

The learned Advocate representing the respondent No.1/insurance company submitted the learned tribunal in absence of specific oral and documentary evidence had justifiably assessed the income of the victim to be Rs. 5000/- per month as notional income.

The occurrence of the accident, involvement of the offending vehicle had been proved. The driving licence, route permit, insurance police etc. have not been disputed by the learned advocate representing the respondent No.1/insurance company.

It is not possible for a lady dealing in grocery business at a remote village to substantiate her income in terms of documentary evidence. At the relevant point of time of the accident in the year 2021 it would not be absurd for a lady to earn 7000/- per month which could be considered to be her monthly income.

In view of the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.², the impugned award of Rs. 10,15,000/- is modified as follows:

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

² (2009) 6 SC 121

Monthly Income	Rs. 7,000/-
Annual Income	Rs. 84,000/-
	Rs. 33,600/-
Future Prospect to be added(40%)	Rs. 1,17,600/-
1/4 th Deduction	Rs. 29,400/-
Personal Expenses	-----
	Rs. 88,200/-
Multiplier to be “15”	Rs. 88,200/-
	X 15
	Rs. 13,23,000/-
General Damages	Rs. 77,000/-
	Rs. 14,00,000/-
Less Award	Rs. 10,15,000/-
	Rs. 3,85,000/-
Entitlement	Rs. 3,85,000/-

The learned advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 10,15,000/-. The appellants/claimants are entitled to receive a sum of Rs. 3,85,000/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 04.08.2021 till the date of its actual realization.

The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 3,85,000/- along with at the rate of 6% interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within four weeks after vacation.

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 learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, Fast Track Court-1, Tamluk, Purba Medinipur in M.A.C. Case No. 430 of 2021 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

The instant appeal and connected application are disposed of accordingly.

Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m.

(Ananya Bandyopadhyay, J.)