

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 1364 of 2024
Kanan Mistri & Ors.
Versus
United India Insurance Co. Ltd. & Anr.

Ms. Ruxmini Basu Roy
Mr. Sandip Bandyopadhyay

...for the Appellants/claimants.

Mr. Rajesh Singh

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

Heard on: December 5, 2024.

Judgment on: December 5, 2024.

Ananya Bandyopadhyay, J:- Both the Learned Advocates representing the appellants/claimants and the respondent No.1/insurance company are present.

The instant appeal had been filed against the judgment and award dated 30th May, 2023 passed by the learned Motor Accident Claim Tribunal cum Fast Track Court, Kalna, Purba Bardhaman in M.A.C. Case No. 6 of 2017.

An application under Section 166 of the Motor Vehicles Act had been filed by the appellants/claimants claiming compensation on account of the death of the victim in an accident which occurred on 12th August, 2016 at about 9.00 p.m. while the victim was returning to his house. The offending vehicle being motor cycle bearing registration No. WB-42X/5673 approached at an excessive speed and losing control hit the victim at STKK road near Lichutala Dharmadanga more. The victim being injured was shifted to Kalna S.D. Hospital where he succumbed to his injuries.

The Learned Tribunal disposed of the issues framed through a judgment dated 30th May, 2023 awarding a sum of Rs. 3,87,500/- along with an interest

at the rate of 6% per annum from the date of filing of application claim application.

Heard the rival contentions of the learned advocates for the claimants as well as respondent No.1/insurance company.

The Learned Advocate representing the appellants/claimants submitted that the learned tribunal had considered the monthly income of the victim to be Rs. 3000/- per month which had been a modicum compared to fiscal index.

The learned advocate representing the respondent No.1/insurance company submitted that in absence of oral and documentary evidence the learned tribunal had justifiably considered the notional income at the rate of 3000/- per month. It is not possible for a ‘mason’ to justify his or her income through oral and documentary evidence. At the relevant point of time it would not be absurd for a ‘mason’ to earn a sum of Rs. 5000/- per month.

The Learned Advocate for the respondent No.1/insurance company did not dispute the occurrence of the accident and the ancillary issues concerning the driving licence, disability certificate, the involvement of the offending vehicle, the route permit, the insurance policy, etc.

Considering the observations of the Hon’ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr*¹ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr*.², the impugned award of Rs. 3,87,500/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	Rs. 60,000/-
	Rs. 15,000/-

¼th in view of 4 no. of dependents	Rs. 45,000/-
Future Prospect to be added(25%)	Rs. 11,250/-
	Rs. 56,250/-
	X 14

Multiplier to be “14”	Rs. 7,87,500/-
General Damage	Rs. 84,000/-

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

2 (2009) 6 SC 121

Less Award	Rs. 8,71,500/-
	Rs. 3,87,500/-
Entitlement	Rs. 4,84,000/-

The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 3,87,500/-. The appellants/claimants are entitled to a sum of Rs. 4,84,000/- along with 6% interest per annum to be paid from the date of filing of the application 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. 4,84,000/- along with interest as aforesaid 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 as mentioned in the award passed by the learned Motor Accident Claim Tribunal cum Fast Track Court, Kalna, Purba Bardhaman M.A.C. Case No. 6 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

The instant appeal is disposed of accordingly.

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

c.m.

(Ananya Bandyopadhyay, J.)