**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**Appellate Side**

**Present :**

**The Hon'ble Justice Shampa Dutt (Paul)**

**FMA 1569 of 2015**

**(FMAT 196 of 2015)**

**The Oriental Insurance Co. Ltd.**

**Versus**

**Smt. Banchita Naskar & Ors.**

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|---|---|---|
| **For the Appellant/ Insurance Company** | : | Mr. Parimal Kumar Pahari. |
| **For the Respondents** | : | Mr. Snehashis Sutradhar,<br>Mr. Swarnali Biswas. |
| **Hearing concluded on** | : | 26.06.2024 |
| **Judgment on** | : | 12.07.2024 |

**Shampa Dutt (Paul) , J.**

**1.** The present appeal has been preferred being aggrieved with the judgment and order passed on 13th day of January, 2015 by the Judge, M.A.C. Tribunal and Additional District Judge, Fast Track, 1st Court, Diamond Harbour in M.A.C. Case No.07 of 2014, South 24-Parganas, **under Section 166 of the M.V. Act.**

**2.** **Facts:-**

> *On 17.04.2012 at about 9:30 A.M. the offending vehicle, bearing No.WB-19E-9791 (Tata Magic), driven in rash and negligent manner by the driver of the same and insured with the O.P. No.2/Insurance Company and proceeding along Dhola Road, overturned near Sultanpur, as a result of which Ranjit Naskar @ Ranajit Naskar, the husband of the petitioner, being one of the passengers of that vehicle, was severely injured and expired on 20.04.2012.*

**3.** The O.P no.2/Oriental Insurance Co. Ltd. has contested this case by filing written statement wherein has challenged the case of the petitioner and denied the accident of the husband of the petitioner and has stated that the O.P. No.2 seeks protection under Section 142/147 and 149 of the M.V. Act.

**4.** The petitioner has examined three witnesses including herself, who have been cross-examined by the O.P. No.2.

**5.** Relevant documents were proved and marked exhibits.

**6.** But no evidence was adduced by the O.P. No.2/Insurance Company.

**7.** The O.P. No.1/Owner did not contest the claim.

**8. On completion of evidence and hearing, the learned Tribunal held as follows:-**

> *"I am of the view that the deceased victim of accident having had been on 23 years of his age, the multiplier 17 will apply and that in consideration of his profession the monthly income of the deceased victim should be assessed at Rs.4,500/-. Accordingly, the amount of compensation is calculated in the following manner: Rs.4,500/- (income per month) x 12 months x 17 multiplier, i.e. Rs.9,18,000/- minus Rs.3,06,000/- (deduction of 1/3rd of compensation amount in consideration of the expenses which the victim would have incurred towards maintaining had been alive, i.e. Rs.6,12,000/- plus Rs.2500/- for the loss of estate plus Rs.2000/- for funeral expenses, i.e. in all Rs.6,16,500/-. Considering the facts and circumstances of the case, I opine that the petitioner is entitled to get interest at the rate of 6% per annum on the amount of compensation for the period from the date of filing of this case till the date of payment of the amount of compensation. Accordingly, I hold that the petitioner is entitled to get Rs.6,16,500/- as compensation plus interest at the rate of 6% per annum thereon for the period from the date of filing of this case till the date of payment of the amount of compensation."*

**9. Being aggrieved with the said award, the opposite party no.2/Insurance Company has preferred this appeal on the grounds:-**

i) That there is a breach of contract (policy) made by the owner of the vehicle.

ii) The defence of the appellant under Section 149(2) of the Motor Vehicles Act, 1988 was not considered.

iii) That the Driver did not have the licence to drive the offending vehicle (transport) as he had a licence to drive light Motor Vehicle (non transport).

**10. From the materials on record including the evidence, it is evident that:-**

a) The deceased was an employee of Mondal Decorator (P.W-2). **Exhibit-12,** is his salary certificate showing his actual salary as Rs.5,000/- for the month of March, 2012 issued by the Proprietor. A receipt to that has been provided issued by the P.W-2 and proved on dock. Thus, his actual salary is taken as Rs.5,000/-.

b) The age of the deceased at the time of accident was **23 years (Exhibit-10)/22 years** in P.M. report and as such **Multiplier of 18** shall be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

c) **Future prospects** shall be @ **40% of income** as he was on a fixed salary. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680)***

d) Number of claimants being 2(two), **1/3rd** is to be deducted for personals expenses. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***

e) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of consortium and funeral expenses ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

**11. Thus, the 'just compensation' in this case would be as follows:-**

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| *Monthly Income* | *Rs. 5,000/-* |
| *Annual Income (5,000 x 12)* | *Rs. 60,000/-* |
| *Less : **1/3rd** towards personal and living expenses* | *Rs. 20,000/-* |
| | ***Rs. 40,000/-*** |
| *Add : Future prospects @ **40%** of the annual income of the deceased* | ***Rs. 16,000/-*** |
| | ***Rs. 56,000/-*** |
| ***Multiplier x 18*** *(56,000 x 18)* | ***Rs. 10,08,000/-*** |
| *Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)* | ***Rs. 84,000/-*** |
| ***Total amount:-*** | ***Rs. 10,92,000/-*** |

**12. Admittedly, the driver of the vehicle did not have the licence to drive the offending vehicle in this case. As such, there has been breach of the policy condition. Accordingly, the appellant/Insurance Company shall be at liberty to recover the compensation amount from the owner/O.P. No.1 of the offending vehicle by due process of law.**

**13.** Admittedly, the Appellant/Insurance Company has deposited the amount of compensation of Rs. 6,16,500/- in terms of the order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs.10,92,000/-together with interest at the rate of 6% per annum from the date of filing**

**of the claim application till deposit, on the total compensation amount.**

**14.** Taking into consideration, the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall deposit the balance amount of Rs. 4,75,500/- along with the interest on the total compensation amount, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimants in equal proportion, **after payment** of the amount for loss of consortium to the Claimant/Wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

**15. The impugned judgment and award of the learned Tribunal under appeal is accordingly modified.**

**16. The appeal being FMA 1569 of 2015/FMAT 196 of 2015 stands disposed of.**

**17.** No order as to costs.

**18.** All connected applications, if any, stand disposed of.

**19.** Interim order, if any, stands vacated.

**20.** Copy of this judgment be sent to the learned Tribunal.

**21.** Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

**( Shampa Dutt (Paul), J. )**