

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 747 of 2022

**Rekha Manna @ Aparna Manna & Ors.
-Vs-**

Bajaj Allianz General insurance Co. Ltd. & Anr.

For the Appellants/Claimants : Mr. Pingal Bhattacharya
Mr. Rajdeep Sinha

For the Respondents/
Insurance Company : Mr. Indradip Das

Heard on : 19.06.2024, 19.07.2024

Judgment on : 05.12.2024

Ananya Bandyopadhyay, J.:-

1. Six claimants of deceased Tapan Manna filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, F.T 2nd Court, Purba Mednipur at Tamluk being MAC Case No.31/2016, due to a road traffic accident which occurred on 17.12.2015 at about 9:15 p.m.
2. The offending vehicle, a Maruti car bearing Registration No. WB-30M-0499 hit the aforesaid victim standing on a concrete road approaching rashly and negligently on Bardabar.
3. Consequently, the victim expired on the spot and was taken to Purba Mednipur District Hospital at Tamluk for Postmortem examination.
4. Subsequently, based on a written complaint, Kolaghat P.S. Case No. 760/2015 dated 20.12.15 under Sections 279/304A of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.

5. The owner of the offending vehicle did not appear before the Court to contest the MAC Case No.31/2016 in the Court of Motor Accident Claims Tribunal, F.T 2nd Court, Purba Mednipur at Tamluk.
6. The respondent, Bajaj Allianz General Insurance Co. Ltd. contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 7,00,000/- to be paid by the insurance company along with interest @ 6% per annum from the date of filing the case till the date of realization.
8. The Learned Advocate representing the appellants submitted as follows:-
 - a. The income of Rs. 7,000 per month earned by the victim was not considered.
 - b. Compensation under the head of "Future Prospects" was not granted.
 - c. The amount towards loss of consortium was not granted.
 - d. Moreover, the multiplier should be considered as 15 with regards to the age of the victim as 38 years.
9. The Learned Advocate for the respondent/insurance company did not dispute the occurrence of the accident nor the other ancillary issues including the validity of the driving licence and insurance policy etc.
10. The Learned Advocate representing respondent insurance company controverted the submission of the Learned Advocate representing the appellant claimants stating that the claimants have failed to prove the monthly income of the victim to be Rs 7,000/- either through documentary or oral evidence.

11. The claimant failed to prove the age of the victim through documentary evidence however the PM report mentioned the age as 38 years and the multiplier is claimed to be 15.
12. Since the monthly income of the victim could not be proved to be Rs 7,000 through oral and documentary evidence, a sum of Rs 5,000/- per month is considered as the notional income considering the fiscal index prevalent on the date of the accident.
13. Considering 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. 7,00,000/- is modified as follows:-

Annual Income	Rs 60,000/-	Rs 5000 x 12
Future Prospect	Rs. 24,000	(40% of Annual Income)
Annual Income +	Rs. 84,000/-	
Future Prospect		
Deduction towards Personal Expenses	Rs. 21,000/-	(1/4 of the total income)
Total Annual Income	Rs. 63,000/-	
Multiplier	Rs. 9,45,000/-	Multiplier as x 15
Loss of Estate	15,000	70,000 + 30% of 70,000 = 84,000
Loss of Consortium	+	
Funeral	40,000	
	+	

¹ (2017) 16 SCC 680

² 2009 ACJ 1298

Expenses	15,000	
Total	Rs 10,29,000/-	

14. The appellant/claimant is entitled to a sum of Rs 10,29,000/- along with an interest at rate of 6 per cent per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.
15. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs 10,29,000/- along with an interest at rate of 6 per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order.
16. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Court of Motor Accident Claims Tribunal, F.T 2nd Court, Purba Mednipur at Tamluk in MAC Case No.31/2016 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.
17. The instant appeal is disposed of accordingly.
18. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
19. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)