

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 1510 of 2017
SBI General Insurance Co. Ltd.
Versus
Mrs. Chalema @ Chhalema @ Salma Khatun & Anr.
With
COT 26 of 2023
Mrs. Chalema @ Chalema @ Salma Khatun & Anr.
Versus
SBI General Insurance Co. Ltd. & Ors.

Mr. Rajesh Singh ...for the Appellant/Insurance Company.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay ...for the Respondent/Claimant.

Heard on: September 9, 2024.

Judgment on: September 17, 2024.

Ananya Bandyopadhyay, J:- Both the learned Advocates for the appellant/insurance company and the respondent/claimant are present.

The instant appeal has been filed against the judgment and order dated April 4, 2017 passed by the learned Motor Accident Claims Tribunal-cum-learned Additional District at Alipurduar, District-Jalpaiguri, whereby the learned Tribunal granted a compensation to the tune of Rs.10,93,440/-.

The learned Advocate for the appellant/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, the rout permit, the insurance police, etc. However, the learned advocate for the

appellant/insurance company submitted that the monthly income to be Rs.6,000/- of the victim working as 'mason helper' could not have been Rs.200/- per day.

The learned Advocate for the respondent/claimant opposed the submission of the learned Advocate for the appellant/insurance company stressing on the fact of amputation of right hand of the victim in the accident. It was further submitted that the learned Tribunal erred in granting future prospect to the extent of 30% which otherwise should have been 40% and considering the age of the victim to be 33 years, the learned Tribunal further erred in assessing the multiplier to be 15 instead of 16. The victim lady suffered permanent disability to the extent of 80% incurring the accident whereby the offending vehicle bearing registration No.BR-11H/4554 (Tata Indigo ECS) collided with vehicle registration No. WB 69-5594 (Tata Magic) wherein the victim had been a passenger on 18.02.2013 at about 2.00 pm on NH 31/C (Birpara-Madarihat Road near Government Saw Mill at Madarihat).

The learned Tribunal disposed of the issues framed and granted the compensation as aforesaid. It is impossible for the victim to produce documentary evidence with regard to the earning of Rs.200/- per day that a helper of a mason. The learned Tribunal has considered the monthly income of the victim to be Rs.5,200/- on the basis of her employment for 26 days a month as a helper of a mason and this Court is not inclined to interfere with the same.

The learned Tribunal had incorrectly considered the extent of future prospect to be 30% instead of 40% and the multiplier to be 15 in place of 16 with regard to the age.

Considering the observations of the Hon’ble Apex Court Pranay 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. 10,93,440/- is modified as follows:

Monthly Income	Rs. 5200/-
	X 12
Annual Income	-----
	Rs. 62,400/-
Future Prospect to be added(40%)	+ 24,960/-
	Rs. 87,360/-
	X 16
Multiplier to be “16”	-----
Disability 80%	Rs. 13,97,760/-
(13,97,760-11,18,208) 2,79,552	Rs. 2,79,552/-
	Rs. 11,18,208
Non pecuniary (including medical expenses)	Rs. 1,20,000/-
	Rs. 12,38,208/-

It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company has deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 12,32,570/- as per the challan filed by the learned advocate for the Appellant/Insurance company. The respondent/claimant is entitled to receive the balance amount of Rs. 12,38,208/- at the rate of 6% per cent per annum from the date of filing of the claim application (17.03.2016) till the date of actual realization.

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

² (2009) 6 SC 121

The learned Advocate for the respondent/claimant is to withdraw the entire amount of compensation deposited before the office of the learned Registrar General, High Court at Calcutta and inform the learned Advocate for the appellant/insurance company of such withdrawal and after computation of the actual amount of compensation granted by this Court. The excess amount, if any, to be receivable by the respondent/claimant will be disbursed by the appellant/insurance company to the respondent/claimant through NEFT on furnishing of bank account details to the learned Advocate for the appellant/insurance company within four weeks of information being transmitted to the learned Advocate for the appellant/insurance company.

The interest generated 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 the aforesaid amount is to be disbursed in favour of the respondent/claimant.

The instant appeal is disposed of accordingly.

The lower court records be sent down to the concerned tribunal forthwith.

Accordingly, FMA 1510 of 2017 and COT 26 of 2023 are disposed of.

(Ananya Bandyopadhyay, J.)