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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 324 of 2023

Tuluyara Bibi @ Tuluyara Sekh & Ors.
-Vs-
The New India Assurance Co. Ltd & Anr.

For the Appellants/claimants	:	Ms. Sima Ghosh
For the respondent/insurance co.	:	Ms. Gopa Das Mukherjee
Heard on	**:**	18.07.2024
Judgment on	**:**	12.08.2024

Ananya Bandyopadhyay, J. :-

1. The learned advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The instant appeal has been filed against the judgment and order dated 29th June, 2019 passed by the Motor Accident Claims Tribunal – cum – 3rd Fast Track Court, Berhampore, Murshidabad in MAC Case No.40 of 2017.
3. Learned advocate for the appellants/claimants submitted that the learned Tribunal erred in considering the notional income to be Rs.3,000/- in the case where the victim had a specific avocation of being a bus driver who succumbed to his injury out of an accident and the same had been

established through evidence. It was further submitted that the claim application in serial No.4 mentioned the occupation of the deceased to be a driver and the monthly income of the deceased to be Rs.7,500/-.

4. It was further submitted by the learned advocate for the appellants/claimants that vide order dated 27.02.2023 this Court had expunged the name of the claimant no.3/Iman Sk., who expired on 12.09.2021. The number of the appellants/claimants has been reduced from 4 to 3 accordingly.

5. It further appeared from the aforesaid order dated 27.02.2023, the deceased/victim had no other legal heirs apart from the names mentioned in the claim application. The deceased, Iman Sk., did not have any legal heirs to be substituted.

6. The learned advocate for the respondent/insurance company opposed the submission of the learned advocate for the appellants/claimants.

7. The appellants/claimants had filed the MAC Case No.40 of 2017 through an application under Section 166 of the Motor Vehicles Act. The learned Tribunal framed the issues and assessed the oral as well as documentary documents on record and determined the compensation to

the extent of Rs.7,12,600/- along with an interest to be paid at the rate of 6% per annum from the date of filing of this case on 11.01.2017 and also to pay a charge of penal interest at the rate of 9% per annum from the date of passing of the impugned order till the date of realization.

8. The deceased victim expired on 21.11.2016 at about 11.30 p.m. at Jalangi, Berhampore Road near Bablabona under Domkal Police Station, District-Murshidabad when the offending vehicle being a truck bearing registration no.WB 57B 3082 collided with another bus bearing registration no. WB 41-D-9781 which was driven by the deceased/victim. The rush and negligent driving of the driver of the offending vehicle was attributed to the occurrence of the accident. The certified copy of the FIR, charge-sheet, post-mortem, driving licence and the insurance policy of the offending vehicle were considered by the learned Tribunal. The respondent/insurance company did not adduce any further evidence to rebut claim of the appellants/claimants. The evidence on record established the avocation of the deceased/victim a bus driver, who was evidently driving the bus at the time of the accident and the same had been proved through oral as well as documentary evidence. The driving licence of the

deceased/victim was also produced and the same had been placed on record. The learned Tribunal considered the monthly income of the deceased/driver to be Rs.3,000/- as notional income in absence of specific document to prove his earnings. However, the accident occurred in the year 2016 and at the relevant time the driver of the bus could have earned more than Rs.200/- per day, and considering the fiscal component of the relevant time, the monthly income of the driver is considered to be Rs.7,000/- per month.

9. Considering the observations of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr*[1] *and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*[2]

10. The impugned award of Rs. 7,12,600/- is modified as follows:-

Monthly Income	Rs. 7,000/-
	x 12
Annual Income	------------------
	Rs. 84,000/-
Add Future Prospect 40%	
	Rs. 33,360/-
Deduction ¼	--------------------
	Rs. 1,17,600/-
	Rs.29,400,00/-

	Rs. 88,200.00/-
Multiplier by "17"	
	X 17

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

2 (2009) 6 SC 121

	Rs.14,99,400/-
	Rs. 14,99,400/-
	Rs. 70,000/-
Add: General Damages to be added	Rs. 15,69,400/-
(Rs.70,000)	Rs. 7,12,600/-
Less: Principal Award Received	------------------
	Rs. 8,56,800/-
Entitlement	
	Rs.8,56,800/-
	------------------

11. It was further submitted by both the learned advocates as aforesaid that the appellants/claimants have already received a sum of Rs. 7,12,600/-. The appellants/claimants are entitled to receive the balance amount of Rs. 8,56,800/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
12. The learned advocate for the respondent/insurance company is to deposit the balance sum of Rs. 8,56,800/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
13. On receipt of the said amount, 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 amongst the

appellant nos.1, 2 and 3, as mentioned in the award granted by the Motor Accident Claims Tribunal, 3rd Fast Track Court, Berhampore, Murshidabad in MAC Case No.40 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

14. The instant appeal is disposed of accordingly.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)