

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT No. 409 of 2016

with

CAN 1 of 2024

Smt. Man Kumari Khalling

Vs

The Oriental Insurance Company Limited & Anr.

**For the Appellant/
Claimant**

: Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay,
Mr. Rakib Hussain,
Ms. Rukmini Basu Roy.

**For the Respondent No.1/
Insurance Company**

: Mr. Parimal Kumar Pahari.

**For the Respondent No.2/
Owner**

: None.

Hearing concluded on

: 21.08.2024

Judgment on

: 18.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimant against the Judgment and Award dated 31.08.2015 passed by Judge, Motor Accident Claims Tribunal, 1st Court, Additional District Judge, Siliguri in M.A.C. Case No. 09(02) of 2012, **under Section 166 of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

“.....On 08.05.2010 at about 10.30p.m.her son Sewak Khaling was returning from his working place at Royal Sarovar Hotel at Sevoke Road, Siliguri to his home. On the way at Siliguri Salugara Road in front of Sona Motor, one Motor Cycle being No. WB-74P-1962 being driven rashly and negligently hit her son, as a result of which he sustained severe injuries and he was immediately shifted to Anandalok Nursing Home where he died on 12.05.2010.

At the time of accident her son was 22 years old, and used to earn Rs. 6,000/- per month from his job of painter and polish. She herself along with her family were totally dependent upon the income of her son as her husband is a patient of Glaucoma since long and is almost blind.

The offending Vehicle being Regd. No. WB-74P-1962 was insured with the Oriental Insurance Co. Limited. She prays for compensation amounting to Rs. 8,25,500/-.....”

3. **O.P. No.1/Oriental Insurance Co. Ltd.** is contested the case by filing written statement denying the materials averments of the petition and contended inter alia that the case is not maintainable in law and the case is liable to be dismissed.
4. The Claimant examined **two witnesses** and proved relevant documents which were marked **Exhibit 1 to 9.**

5. The opposite parties cross examined the P.W's but did not adduce any evidence on behalf of the opposite party.

6. **The Tribunal finally held as follows :-**

“.....MAC Case No. 09(02) 2012

Dated 31st August, 2015

.....The amount of compensation is thus as follows:-

1/2 of Rs. 15000/- x 15 (multiplier) = Rs. 1,12,500/-

I am also inclined to grant a sum of Rs. 2,000/- as funeral expenses and a sum of Rs. 2,500/- as loss of estate. In all it comes to the tune of Rs. 1,17,000/- to which the petitioner, Smt. Man Kumari Khaling (being the mother & legal heir of the deceased) is entitled to get as compensation.....

***Sd/-
Tribunal Judge, MAC Cases &
Addl. Dist. Judge, 1st Court,
Siliguri, Darjeeling.....”***

7. **Beings aggrieved, the claimant has preferred the present appeal on appeal on the ground :-**

That the learned tribunal without considering the actual income of the victim, did not grant ‘Just Compensation’ to the claimant, in accordance with the relevant provision of law.

8. **From the materials including the evidence on record, the following is evident :-**

- i) From the FIR and seizure list (**Exhibit-4 and 5**) it appears that the victim died on **12.05.2010**, in the accident by the offending vehicle, caused by its rash and negligent driving.
- ii) The offending vehicle had valid Insurance (**Ext. 8**).
- iii) Income of the deceased be taken as **Rs. 3000/- p.m.** considering that the accident occurred in 2010 and the salary certified/proved was not in accordance with law.
- iv) The age of the victim was **25 years (voter card Ext.1)** so **multiplier 18** will be applicable. (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121***)
- v) **Future prospect** shall be **40%** of income. (***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680***)
- vi) Deceased being a bachelor, **50% deduction of income** to be made. (***Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)***)
- vii) General damages of **Rs. 70,000/-** under the conventional heads of Loss of estate: **Rs.15,000**, Loss of child: **Rs.40,000**, Funeral expenses: **Rs.15,000**. (***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%).

9. Thus the “Just Compensation” in this case would be as follow:-

<i>Monthly Income</i>	<i>Rs. 3,000/-</i>
<i>Annual Income (3,000 x 12)</i>	<i>Rs. 36,000/-</i>
<i>Less : Deduction on Income 50% (Bachelor)</i>	<i>Rs. 18,000/-</i>
	<i>Rs. 18,000/-</i>
<i>Add : Future prospects @ 40% of the annual income of the deceased</i>	<i>Rs. 7,200/-</i>
	<i>Rs. 25,200/-</i>
<i>Multiplier x 18 (25, 200 x 18)</i>	<i>Rs. 4,53,600/-</i>
<i>Add: General damages Loss of estate: Rs.15,000/- Loss of child: Rs.40,000/- Funeral expenses: Rs.15,000/-. (Rs. 70,000 + 20% = Rs. 84,000)</i>	<i>Rs. 84,000/-</i>
<i>Total amount:-</i>	<i>Rs. 5,37,600/-</i>

10. Admittedly, the Claimant has received an amount of compensation of **Rs. 1,17,000/-** together with interest in terms of order of the learned Tribunal. Accordingly, the Claimant is now entitled to the **balance amount of compensation of Rs. 4,20,600/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

11. Taking into consideration, the amount already received by the **Claimant/Appellant**, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimant, upon

satisfaction of her identity and payment of *ad-valorem* Court fees, if not already paid.

12. The appeal being FMAT 409 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

13. All connected applications, if any, stand disposed of.

14. There will be no order as to costs.

15. Interim order, if any, stands vacated.

16. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)