

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3169 of 2015

(FMAT 413 of 2015)

Smt. Sonali Sarkhel & Ors.

Vs

National Insurance Company Ltd. & Anr.

For the Appellants

: Mr. Krishanu Banik,
Mr. Thathagata Banik.

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

: Mr. Afroz Ali.

Hearing concluded on

: 24.06.2024

Judgment on

: 01.07.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred against the Judgment and Award passed on 16th December, 2014 by the Learned Judge, Motor Accident Claims Tribunal (Redesignated) Court, Bankura in M.A.C. Case No. 05 of 2014 & 75 of 2012, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts:-**

“The fact of the case is that on 25.02.2012 at about 8.30 - 9.00 am on Bishnupur- Baital Pitch road near Baital More under P.S. Bishnupur, Dist. Bankura, while the victim was going towards Baital More, the offending vehicle bearing no. WB 39Q/2615 which was proceeding towards Garbeta at a very high speed dashed the victim and the victim sustained serious bleeding injuries on his person. He was taken to S.D. Hospital Bishnupur and thereafter, was referred to BSMCH, Bankura where he died after a few hours. The accident was taken place due to the rash and negligent of the driver. The deceased was a private tutor by occupation and he used to earn about Rs. 15,000/- per month.

The O.P. no. 1 National Insurance Company Ltd. contested this case by filing written statement and also by filing a petition u/s 170 of M.V. Act. The O.P. No. 1 has denied the case of the petitioners.”

3. The Claimants examined two witnesses and marked the documents being P.M. report, Admit Card, Insurance Policy, Seizure lists, Charge-sheet and FIR as **Exhibits 1 to 6.**
4. **Considering the materials and evidence on record, the Learned Tribunal held as follows:-**

“The notional income of Rs. 3,000/- per month shall be treated as income of the victim. Considering his age 34 years as per postmortem report, the dependency would come to Rs. 24,000 x 17= 4,08,000/-. Apart from that a sum of Rs. 20,000/- and a sum of Rs. 10,000/- be given to the petitioners as loss of estate and for funeral expenses respectively. A sum of Rs. 5000/- be also given to the petitioner no. 1 as loss of consortium”.

5. Being aggrieved, the claimant has preferred the present appeal on the grounds that:-

- i) That the compensation granted is inadequate.
- ii) The Learned Tribunal did not consider the proper income of the deceased.
- iii) Other heads of compensation was not considered.

6. From the materials and evidence on record the following facts are evident:-

- a) **Exhibit 2** is the Admit Card of the victim, showing his date of birth as 28.02.1976. The accident took place on 02.03.2012. Thus the victim was aged **36 years** at the time of incident and as such **multiplier of 15** is applicable. **(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)**
- b) The victim being self-employed and the incident occurring in the year 2012, the income be taken as **RS. 4000/- per month**.
- c) Thus **future prospect** will be **40%** of income **(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680).**

- d) Deduction under personal expenses shall be **1/3rd** as claimed by the Tribunal was granted in favour of three claimants (being 1, 2 & 3). ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121).***
- 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%)

7. Thus, the “Just Compensation” in this case would be as follows:-

<i>Monthly Income</i>	<i>Rs. 4,000/-</i>
<i>Annual Income (4,000 x 12)</i>	<i>Rs. 48,000/-</i>
<i>Less : 1/3rd towards personal and living expenses</i>	<i>Rs. 16,000/-</i>
	<i>Rs. 32,000/-</i>
<i>Add : Future prospects @ 40% of the annual income of the deceased</i>	<i>Rs. 12,800/-</i>
	<i>Rs. 44,800/-</i>
<i>Multiplier x 15 (44, 800 x 15)</i>	<i>Rs. 6, 72, 000/-</i>
<i>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)</i>	<i>Rs. 84,000/-</i>
<i>Total amount:-</i>	<i>Rs. 7, 56, 000/-</i>

- 8.** Admittedly, the Claimants/ Appellants have received the amount of compensation of Rs. 4,43,000/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the

balance amount of compensation of Rs. 3, 13, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

9. Taking into consideration, the amount already received by the Claimants/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 claimants in equal proportion, **after payment** of the amount for loss of consortium to the appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.
10. **The appeal being FMA 3169 of 2015/FMAT 413 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
11. No order as to costs.
12. All connected applications, if any, stand disposed of.
13. Interim order, if any, stands vacated.
14. Copy of this judgment be sent to the learned Tribunal.
15. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)