

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**F.M.A. No. 522 of 2023
The Oriental Insurance Co. Ltd.
Versus
Sabita Biswas & Anr.**

**With
FMA 831 of 2022
Sabita Biswas.
Vs.
The New India Assurance Co. Ltd & Anr.**

Ms. Sucharita Paul

...for the Appellant/Insurance Company.

Mr. Amit Ranjan Roy

...for the Respondent/Claimant.

Heard on: October 1, 2024.

Judgment on: October 1, 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 award dated 4th March, 2022 passed by the learned Motor Accident Claims Tribunals, cum Additional District Judge, Fast Track Court-II, Krishnanagar, Nadia in M.A.C. Case No. 91 of 2018.

The learned advocate for the appellant/insurance company stated that the professional tax to the extent of Rs.130 was not deducted from the monthly income of the victim. The learned tribunal erred in granting a sum of

Rs.7,00,000/- as *exgratia* to which the victim was not entitled to. Considering the age of the victim the learned tribunal as considered the multiplier to be 16 instead of 15. The learned advocate for the appellant/insurance company relied on the judgement by a Coordinate Bench of this Court in FMA 522 of 2023 and FMA 831 of 2022.

The learned advocate for the respondent/claimant refuting the contentions of the learned advocate for the appellant/insurance company further emphasised the fact that the learned tribunal erred in not granting interest on the compensation award from the date of filing of the claim application under Section 166 M.V. Act.

An application was filed under Section 166 of the M.V. Act concerning an accident, which occurred on 29th January, 2018 at about 6.40 a.m. whereby the victim had been a passenger of a sub bearing registration no.WB-63 A/3214, which incidentally fell into a river causing death of the victim aged about 39 years, who had been a primary teacher in Palgachhi MGD Primary School in the District of Malda. The accident occurred on 29.01.2018 at about 6.40 a.m. on Nolini Bagchi Setu. The victim expired at Mrushidabad Medical College and Hospital at Baharampur.

The learned Advocate for the appellant/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, the route permit, the insurance policy, etc.

The service record of the victim marked as Exhibits 10 and 11 by the learned Tribunal mentioned the age of the victim to be 39 years and, accordingly, the multiplier should have been considered to be 15. The

professional tax of Rs.130 should have been deducted from the monthly income of the victim. It further appeared that the appellant/insurance company did not controvert the sum of Rs.7,00,000/- granted as exgratia during the recording the evidence by the Learned Tribunal, not to be interfered with by this Court. Considering the observations of the Hon’ble Apex Court Pranay in *National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.²*, the impugned award of Rs. 25,89,737/- is modified as follows:

Income	Rs. 19,930/- 130/-
Less P. Tax	Rs. 19,800/-
Future Prospect to be added(50%)	Rs. 9,900/- -----
	Rs. 29,700/- x 12
Annual Income	Rs. 3,56,400/-
Less Personal Expenses (50%)	Rs. 1,78,200 -----
	Rs. 1,78,200/-
Multiplier to be “15”	X 15 -----
	Rs. 26,73,000/-
General Damages	Rs. 36,000/- -----
	Rs. 27,09,000/-

It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had deposited the entire awarded amount with an interest of 6 % per annum from the date of filing of the claim application i.e. 38,31,560/- as per the challan filed by the learned advocate for the Appellant/Insurance company. The

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

respondent/claimant is entitled to receive the balance amount of Rs. 27,09,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The office of the Registrar General, High Court at Calcutta is to deduct the entire amount inclusive of the awarded amount as aforesaid along with an interest of 6 % per annum on the same from the date of filing of the claim application till the date of realization, from the deposited amount in this Court and refund the balance amount through a cheque to the learned advocate for the insurance company for the accounts of the 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 has been 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 and the balance sum of interest to be refunded to the insurance company through distinct account payee cheques.

The instant appeals are disposed of accordingly.

The interim order if any stand vacated.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)

² (2009) 6 SC 121