

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.512 of 2023
The National Insurance Co. Ltd.

vs.

Namita Maiti & Ors.

with

COT 40 of 2024

Namita Maiti & Ors.

Vs.

The National Insurance Co. Ltd & Anr.

Mr. Sanjay Paul

Ms. Jaita Ghosh

... for the appellant/insurance company.

Mr. Amit Ranjan Roy

... for the respondent No.1 to 4/claimants.

Heard on: November 26, 2024.

Judgment on: November 26, 2024.

Ananya Bandyopadhyay, J:-

The Learned advocates representing the appellant/insurance company as well as respondents/claimants are present.

The instant appeal had been filed against judgment and award dated 16th March, 2023 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 2nd Court, Tamluk, Purba Medinipur, in M.A.C. Case No. 86 of 2015.

An application under Section 166 of the Motor Vehicles Act had been filed by the respondents/claimants due to the death of the victim in an accident which occurred on 26th May 2015 at about 7.30 a.m. on NH – 41 at Uttar Narikelda under Tamluk Police Station. The victim had been a passenger of the offending vehicle bearing Registration

No. WB-29A/8302. The victim carrying approximately 62 passengers lost control over speed and eventually capsized besides the road wherein six of such passengers expired and 56 were injured.

The learned advocate representing the appellant/insurance company submitted the offending bus carried 62 passengers contravening the insurance policy since the bus had seat for 58 persons under the scheme of insurance policy and further benefit could not be extended to 62 passengers. More-over it was stressed that the document of salary claiming the income of the victim, was issued after the accident without legal basis and the same could not be considered in computing the amount of income. However, the notional income of Rs. 5000/- per month should be considered.

The learned advocate representing the respondents/claimants had filed a cross objection claiming submitted that the amount to be granted under the element of future prospect should be 25%.

The evidence of P.W.3 the employer to the deceased stated to have paid him to Rs. 12,000/- per month as salary certificate and note book were marked as Ext.8 and 8/1 to endorse the claim of P.W.3. P.W. 3 stated himself to be a proprietor of Jana construction wherein the victim used to work. However, the P.W.3 in his examination-in-chief stated that the victim used to work as supervisor of Jana Construction Firm. In the absence of monthly salary paid to the victim through a proper salary slip there cannot be absolute reliance on the certificate and the note-book. However, in the year 2019 a resident of Purba Medinipur indicating considerable distance to attend his job at Calcutta should have earned Rs. 8000/- per month which cannot be improbabilised. The future prospect to the extent of 25% should be granted.

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, etc.

Considering the observations of the Hon’ble Apex Court 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. 13,30,000/- is modified as follows:

Monthly Income	Rs. 8000/-
Annual Income	Rs. 96,000/-
	Rs. 24,000/-
Future Prospect to be added(25%)	Rs. 1,20,000/-
	Rs. 30,000/-
Less 1/4 th Personal Expenses	Rs. 90,000/-
	x 14
Multiplier to be “14”	Rs.12,60,000/-
General Damages	Rs. 70,000/-
	Rs. 13,30,000/-
Entitlement	Rs. 13,30,000/-

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 at the rate of 6 % per annum from the date of filing of the claim application as per the challan filed by the learned advocate for the Appellant/Insurance company.

The respondent No.1 to 4/claimants are entitled to receive the balance amount of Rs. 13,30,000/- interest 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, Calcutta shall encash the cheques and thereafter disburse the same to the present respondent No.1 to 4/claimants in equal proportion as mentioned in the award passed by the learned

1 2017(4)TAC 673(S.C)
² (2009) 6 SC 121

Judge, Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 86 of 2015 on proof of proper identification of the respondents/claimants subject to payment of *ad valorem* Courts fees and refund the differential amount if any through a cheque to the learned advocate representing the appellant/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 already been 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 No.1 to 4/claimants.

The instant appeal and COT 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.)