

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMAT(MV) 277 of 2022
Mushida Bibi & Ors.

v.

The Reliance General Insurance Co. Ltd. & Anr.

Ms. Sima Ghosh

... for the appellants/claimants.

Mrs. Gopa Das Mukherjee

... for the respondent no.1/insurance company.

Heard on: 24th September, 2024.

Judgment on: 24th September, 2024.

Ananya Bandyopadhyay, J:-

The learned advocates for the appellants/claimants as well as respondent Nos. 1 are present.

The instant appeal has been preferred by the appellants/claimants against the Judgment and award dated 15th December, 2021 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 3rd Court, Berhampore, Murshidabad in M.V. Case No.567 of 2016.

The learned advocate for the appellants/claimants submitted that the claimant was engaged in the business of 'grocery'. The learned tribunal erred in computing the monthly income to be Rs. 3000/- as notional income.

The learned tribunal had erred in deducting 1/3rd instead of 1/4th of the victim's income since the number of claimants had been 5. The future prospect

to the extent of 25% was not considered while computing the compensation amount.

The learned advocate for the respondent Nos.1/insurance company disputed the income as claimed by the learned advocate for the appellants/claimants to be Rs.5000/- per month.

An application under Section 166 of the MV Act had been filed by the appellants/claimants owing to the death of the deceased victim in an accident which occurred on 13.11.2016 at about 8.15 a.m at NH34 whereby his bicycle collided with the offending vehicle bearing registration No. WB-15A/5275 whereby the victim had fallen down and ran over by the offending vehicle.

The occurrence of the accident, involving the offending vehicle has been proved. The driving licence, route permit, insurance police etc. have not been disputed.

In absence of the documentary evidence with regard to the monthly income of the victim and considering the fiscal index in the year 2016 the monthly income of the victim to be Rs. 5000/- which is not improbable.

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. 3,12,000/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	X 12
	Rs. 60,000/-

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

² (2009) 6 SC 121

Future Prospect to be added(25%)	Rs. 15,000/- -----
	Rs. 75,000/-
Less 1/4 th Personal Expenses	Rs. 18,750 /-

	Rs. 56,250,00/-
Multiplier to be “13”	X 13

	Rs. 7,31,250/-

General Damages	Rs. 84,000/-

	Rs. 8,15,250/-
Less Award	Rs. 3,21,500/-
Entitlement	-----
	Rs. 4,93,750/-

The learned advocate for the appellants/claimants submitted that the appellants/claimants to have already withdrawn a sum of Rs.3,21,500/-. The appellants/claimants are entitled to a sum of Rs.4,93,750/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,93,750/- 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 eight weeks from the date of passing of this order.

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 as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge 3rd Court, Berhampore, Murshidabad in M.V. Case No.567 of 2016 on

proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

The instant appeal is disposed of accordingly.

Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m.

(Ananya Bandyopadhyay, J.)