

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3367 of 2015

(FMAT 564 of 2015)

Mafroja Bibi @ Mafroja Khatun @ Mafroja Begam & Ors.

Vs.

The National Insurance Company Ltd. & Ors.

For the Appellants : Mr. Amit Ranjan Roy.

**For the Respondent/
Insurance Company** : Mr. Rajesh Singh.

Hearing concluded on : 20.06.2024

Judgment on : 26.06.2024

Shampa Dutt (Paul), J.:

1. The present claims appeal has been preferred against the Judgment and Award passed on 20th February, 2015 by the Motor Accident Claims Tribunal-Cum-Judge Special Court, Hooghly at Chinsurah, in M.A.C. Case No. 964 of 2014 (Old No. 49 of 2009) **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts:-**

“On 16.10.08 at about 3.00 hrs. the victim Shahanowaj Haque @ Shahanewaj Haque @ Sahanaz Haque was traveling in an ambulance bearing No. WB 53/5088 as patient party from Suri. The ambulance was proceeding along Durgapur Expressway and dashed against the rear portion of a tanker bearing No. WB11/1328 at Maheswarpur Mor. The tanker stopped suddenly without giving signal. As a result of sudden stoppage, the ambulance could not check the speed and knocked on the rear portion of the tanker. The victim sustained severe injury and subsequently succumbed to his injuries. Rash and negligent driving by both the drivers of the said vehicles resulted in the accident. Police started a case in connection with said accident alleging offence u/s 279/304/338 and 427 of the Indian Penal Code”.

3. The owner of the vehicle did not contest the claim.
4. The insurance Companies contested the case by filing written statement individually, wherein the O.P. No. 3 it has denied all the material allegations and challenged the maintainability of the case on various points of law viz *mis-joinder* and *non-joinder* of necessary parties, principle of *estoppel*, waiver and acquiescence and want of cause of action. It has also challenged the age of the deceased and the income at the time of his death. O.P. No.3 also filed additional written statement contending, inter alia, that on receiving summons from this Court they appointed an

investigator for investigation and for verification of the driving license. It is further contended that the driving license of the driver of the tanker was neither seized by police nor was the same collected by the owner of the vehicle and it could not be gathered as to whether the driver had any valid driving license or not. The driver of the ambulance was equally responsible for the said accident but no charge-sheet was submitted against him since he died.

5. The O.P. No. 3 in its additional written statement has stated that the ambulance had the privilege to run faster and it dashed against the tanker from behind. Hence, it was the ambulance which had entire contribution in the said accident and there was no fault on the part of the tanker.
6. O.P. No.4 in its written statement has stated that the case is not maintainable on facts and in law, so also for want of cause of action and under principle to *estoppel*, waiver and acquiescence and is also barred by law of limitation. According to O.P. No. 4, the driver of Vehicle No. WB 11/1328 was responsible for the alleged accident and as such insurance company of vehicle No. WB 11/1328, is liable to pay compensation. This O.P. further submits that the owner of vehicle No. WB53/5088 with full knowledge authorized the driver to drive the vehicle, who had no authority or license and as such the owner of the ambulance was responsible for the accident and is thus liable to pay compensation.

7. The claimants examined 7 witnesses. The insurance, examined one witness and there were 3 court witnesses.
8. Relevant documents in support of the claimants case has been marked exhibits.
9. **Considering the materials and evidence on record, the learned Tribunal granted compensation on the finding as follows :-**

“M.A.C. Case No. 964 of 2014 (Old No. 49 of 2009)

Dated: 20th February 2015

However, considering the facts and circumstances and the partnership document I am of the view that the deceased had income of Rs. 4,000/- p.m. Therefore yearly income of the deceased comes to Rs. 48,000/- of which 1/3 would be incurred by him for his own maintenance had he been alive; by reducing 1/3 from the yearly income and multiplied by multiplication 18 compensation comes to Rs. 32,000 X 18 = 5,76,000. Petitioners are further entitled to get Rs. 5,000/- for funeral expenses, Rs. 2,500/- for loss of consortium, Rs. 2,500/- loss of estate. Apart from that it is established from the evidence that petitioners incurred Rs. 2,13,524.56 towards medical expenses. The evidence adduced by the petitioners in this regard is not impeached and the document itself is found to be substantial one to prove the medical expenses. Petitioners are entitled to get the expenses incurred for the treatment of the deceased. The quantum of compensation as calculated above is added with the medical expenses and as such total compensation comes to Rs. 5,76,000 + 2,13,524.56 + 5,000 + 2,500 + 2,500 = Rs. 7,99,525/-, the issues are replied accordingly. The petitioners are found entitled to get compensation of Rs 799525/-(seven lakhs ninety nine thousand five hundred twenty five) only.

**Sd/-
Motor Accident Claims Tribunal-
Cum-Judge Special Court,
Hooghly at Chinsurah”**

10. Being aggrieved, this appeal has been preferred by the claimants on the following ground:-

That the learned Tribunal did not consider the correct income of the victim nor the medical expenses including proper interest rate.

11. In appeal, on considering the evidence and materials on record, the following is the findings of this court for ‘Just Compensation’:-

- i) **Exhibits 16, 17 and 18** show that the victim had a partnership firm having business of “Stone Crushing”.
- ii) In 2024, the proprietor salary in this business ranges from Rs. 2.7 lakhs to Rs. 3.3 lakhs per year, which is about Rs. 25,000/- per month.
- iii) Thus, in the year 2008, being self employed, a sum of Rs.4000/- be fixed as monthly income ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680, decided on 31st October, 2017).***
- iv) **Future prospects** at **40%** of the income be added considering that the victim was self employed and aged about **28 years**. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (Supra)).***
- v) **Multiplier of 17** shall be applicable considering the age to be 28 years. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121- Decided on 15th April 2009 (Supreme Court)).***

- vi) There being four claimants, **1/4th** deduction is to be made for personal expenses. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***.
- vii) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the 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%)
- viii) Apart from that it is established from the evidence that petitioners incurred Rs. 2,13,524.56 towards medical expenses.

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

Monthly Income	Rs. 4,000/-
Annual Income (4,000 x 12)	Rs. 48,000/-
Less : 1/4th towards personal and living expenses	Rs. 12,000/-
	Rs. 36,000/-
Add : Future prospects @ 40% of the annual income of the deceased	Rs. 14,400/-
	Rs. 50,400/-
Multiplier x 17 (50,400 x 17)	Rs. 8, 56, 800/-
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)	Rs. 84,000/-
Medical Expenses	Rs. 2, 13, 524/-
Total amount:-	Rs. 1 1, 54, 324/-

- 13.** Admittedly, the Claimants have received the amount of compensation of Rs. 7, 99, 525/- 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, 54, 799/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

14. Taking into consideration the amount already received by the Claimant/Appellant, both the Insurance Company shall deposit the balance amount in equal proportion, along with the interest, with the learned Registrar General, High Court, Calcutta, 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.
15. **The appeal being FMA 3367 of 2015/FMAT 564 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
16. No order as to costs.
17. All connected applications, if any, stand disposed of.
18. Interim order, if any, stands vacated.
19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)