

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3186 of 2015

(FMAT 822 of 2015)

Smt. Saraswati Das & Ors.

Vs

The National Insurance Co. Ltd. & Anr.

**For the Appellants/
Claimants** : Mr. Ashique Mondal.

**For the Respondent No.1/
Insurance Company** : Mr. P.K. Pahari.

**For the Respondent No.2/
Owner** : None.

Hearing concluded on : 09.07.2024

Judgment on : 31.07.2024

Shampa Dutt (Paul), J.:

1. The present appeal by the claimants/appellants has been preferred against the award passed on 20.03.2015 by the Learned Judge, M.A.C. Tribunal (11th Court) at Alipore, in M.A.C.C. No. 25 of 2014 (originally M.A.C.C. No. 90 of 2010), **under Section 166 of the M.V. Act.**

2. FACTS :-

“On 11.10.10 at around 10.15 hours, the offending bus bearing No. WB - 04C / 1109 moving from west to east direction along India Exchange Place dashed Adinath Das, the victim of this case near Tea Board while he was trying to reach Todi Mansion. The victim fell down on the footpath and sustained severe injuries all over his body and succumbed to his injuries at Medical College & Hospital on the same day.”

3. The O.P./National Insurance Co. Ltd. appeared and contested the case by filling written statement and ultimately prayed for dismissal of the suit.
4. The O.P./Owner did not contest the case.
5. The claimants examined two witnesses and proved relevant documents which were marked **Exhibit 1 to 14.**
6. **The learned tribunal disposed of the case on the following findings:-**

“

1. Annual income of the deceased (Rs. 14,320/- X 12)	= Rs. 1,71,840/-
2. Less : 1/3 rd of the income that the deceased would have spent upon himself had he been alive (Rs. 1,71,840/- minus Rs. 57,280/-)	= Rs. 1,14,560/-
3. Compensation u/s 166 of the M.V.	

<i>Act (Rs. 1,14,560/- X 11)</i>	<i>=Rs.12,60,160/-</i>
<i>4. Plus : Funeral expenses</i>	<i>= Rs. 2,000/-</i>
<i>5. Plus : Loss of Estate</i>	<i>= Rs. 2,500/-</i>
<i>6. Plus : Loss of consortium</i>	<i>= Rs. 5,000/-</i>
<i>Total</i>	<i>= 12,69,660/-</i>

Therefore the petitioners are entitled to get compensation amount of Rs. 12,69,660/-.

The petitioners are also entitled to get interest at the rate of 8% per annum from the date of filling of the case that is on 11.11.2010 to till date upon the aforesaid amount.”

7. Being aggrieved, this appeal has been preferred on the following grounds:-

That the Learned Tribunal did not grant future prospects, general expenses, and other reliefs to which the claimant is entitled under the law.

8. Considering the materials and evidence on record, the following is evident :-

- i) P.W.2, an eyewitness has proved the rash and negligent driving of the offending vehicle.
- ii) The deceased was posted in the office of the PWD, Writers Building at the time of the accident.
- iii) The accident occurred on 11.10.2010. There was a dispute about the vehicle involved in the accident. The FIR and the Charge Sheet mentions vehicle No. W.B. – 04C – 1109 (Exbt. - 2 & 3). The G.D. Entry (Extract) (Exbt. 4 & 5) mention, vehicle

no. WB -04C-1484 but G.D. Entry dated 11.10.10 mentions vehicle WB-04C-1109.

- iv) **The seizure list dated 11.10.10 shows that the vehicle seized is WB - 04C - 1109.**
- v) Exbt. 7, the Insurance Policy filed is in respect of vehicle no. WB - 04C - 1109. Thus as the policy proved in this case (Exbt. 7) relates to vehicle no. WB-04-C-1109, the offending vehicle in this case is WB - 04C - 1109, also in view of Exbt. 2 & 3, the Charge Sheet and FIR.
- vi) Date of Birth of the deceased in the service book is 15.12.1956. The accident occurred on 11.10.10. Thus the deceased was aged **53 plus years**, so **multiplier of 11** will be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121).***
- vii) In view of the last pay certificate of the deceased for the month of September, 2010, the income of the deceased to be considered is **Rs. 14,430.00/- minus P. Tax of Rs. 110/-, thus Rs. 14,320.00/-.**
- viii) The Insurance Company has not adduced any evidence against the claim of the Appellants.
- ix) Thus, **Future prospects would be 15%** of actual income (salary) as the deceased had a permanent Govt. Job. ***(National***

Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)

- x) Considering the number of claimants (3), **1/3 of the Income** of the victim is to be deducted.
- xi) 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%).

9. Therefore 'Just Compensation' in this case would be as follows :-

Monthly Income	Rs. 14,320/-
Annual Income (Rs.14,320 x 12)	Rs. 1, 71, 840/-
Less : 1/3rd towards personal and living expenses	Rs. 57,280/-
	Rs. 1,14, 560/-
Add : Future prospects @ 15% of the annual income of the deceased	Rs. 17,184/-
	Rs. 1, 31, 744/-
Multiplier x 11 (Rs. 1, 31,744 x 11)	Rs. 14, 49,184/-
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/-
Total amount:-	Rs. 15, 33, 184/-

- 10.** Admittedly, the Claimants have received the amount of compensation of **Rs. 12, 69, 660/-** 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. 2,63,524/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

11. Taking into consideration, the amount already received by the Claimants/Appellants, 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.
12. **The appeal being FMA 3186 of 2015/FMAT 822 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
13. There will be no order as to costs.
14. All connected applications, if any, stand disposed of.
15. Interim order, if any, stands vacated.
16. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)