

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 327 of 2023

Anuyari Bibi & Ors.

-Vs-

The Oriental Insurance Co. Ltd. & Anr.

For the Appellants/Claimants : Mr. Jayanta Kumar Mandal
Mr. Sayantan Rakshit

For the Respondents/
Insurance Company : Mr. Parimal Kumar Pahari

Heard on : 27.06.2024

Judgment on : 06.12.2024

Ananya Bandyopadhyay, J.:-

1. Appellants/claimants of the deceased filed an application under Section 166 of the M.V. Act in the Court of the Ld. District Judge, Paschim Medinipur in M.A.C.C No. 283/2018, claiming an award of Rs.10 lakhs for loss of present and future income, future prospect, loss of love, consortium etc whereby the aforesaid deceased expired due to a road traffic accident on 16.02.2018 at about 6 to 6:30 pm. The case was later transferred to the Court of Motor Accident Claims Tribunal ADJ Special Court (E.C. Act), Paschim Medinipur.
2. The offending vehicle being a pick up van bearing Registration No. WB-33B/0573 approached the deceased in a rash and negligent manner and hit the deceased and his coworker. They both received grievous injuries.
3. Consequently, the victim was taken to Medinipur Medical College and was declared dead by a doctor.

4. The owner of the offending vehicle did not appear before the Court to contest the M.A.C.C No. 283/2018, in the Court of Motor Accident Claims Tribunal ADJ Special Court (E.C. Act), Paschim Medinipur.
5. The respondent, the Oriental Insurance Co. Ltd. contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 8,00,000/- along with interest payable per annum at 4% from the date of filing the case being 17.05.2018 till the date of realization and directed the Oriental Insurance Co. Ltd to pay.
7. The following arguments were submitted by the Learned Advocate of the appellant,
 - a. Compensation should have been granted not only on account of actual income at the time of death of the victim but also on account of prospective income as per present position of law which the victim had reasonably expected to earn more in future.
 - b. Interests should have been awarded at 9% per annum over the entire awarded amount from the date of filing the claim application till its realization.
 - c. The learned Judge of the Tribunal in passing the impugned Judgment had ignored that the wife, son, daughter and parents of the victim were deprived from love, affection and had sustained mental shock and pain for loss of their husband, father and son in a motor accident which was caused due to

rash and negligent driving of the offending vehicle and the victim was not at all responsible for such accident and as such the award was not a completed award and the same was liable to be enhanced.

- d. The compensation amount did not adequately reflect the damages sustained by the appellants- claimants and as such the award was liable to be enhanced.
- e. The victim during his lifetime was maintaining his family which is supported by evidence on record. The actual income should have been assessed at Rs. 12,000/- per month which the victim used to earn at the time of death as a skilled Mason and the learned Judge wrongly assessed the income of the victim of Rs. 4000/- per month. The learned Judge of the Tribunal had not considered the future prospect of the victim as per the present position of law as well as the learned Judge of the Tribunal had misread the decisions of the Hon'ble Apex Court regarding assessment of future prospect and as such the impugned award was bad in law and the same was liable to be enhanced.
- f. The learned Judge of the Tribunal in passing the impugned award had failed to appreciate that the M.V. Act was a beneficial legislature and the strict Rule of Evidence was not to be applied with and the Learned Judge also has not added the adequate amount on the account of loss of consortium, loss of estate, funeral expenses, love and affection of minor etc. with

the awarded amount and as such the impugned award was bad in law and the same was liable to be enhanced.

8. The Learned Advocate of the appellants relied on the following decisions:-

- a. Regarding - assessment of Future Prospect, Selection of Multiplier and deduction towards personal expenses of the deceased victim in a case of a death under Section 166 of M.V. Act, 1988;

(2009)6 SCC 121 [Sarla Verma (Smt.) VS. Delhi transport Corporation and another] Para-30

2017 (4) T.A.O. 673 (S.C.) [National Insurance Co. Ltd. Vs. Pranay Sethi and others;] Para -61

- b. Regarding assessment of Notional Income in a case of a death of efficient Mason aged about 42 years when number of claimants are five in a case under Section 166 M.V. Act.

2023 (3) T.A.C. 357 (S.C.) [Jeyarani and Another Vs. Manager, Bajaj Allianz General Insurance Co. Ltd. and Another] Para- 5;

2023 (1) SAR (AC) 333 [Jamuna Biswas & Ors. Vs. United India Insurance Co. Ltd. & Anr.] para-14

- c. Regarding assessment of the amount on the conventional heads:

2022 SAR (Civ) 238 [Rasmita Biswal & Ors. VS. Divisional Managwer, National Insurance Company Ltd. and Anr.]; para- 16.

**2023 (3) T.A.C. 740 (Cal) / New India Assurance Co. Ltd. VS.
Sima Singh & Ors.]- para-12.3 to 13.**

9. The Learned Advocate representing the respondent/Insurance Company submitted that the Learned Tribunal had rightly adjudicated the claim application and granted the compensation amount controverting the submissions of the Learned Advocate representing the appellants/claimants.
10. Since the occurrence of the accident, insurance policy, the driving licence, rout permit etc. and other ancillary issues are not disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of rectifying the impugned judgment and order to the extent of amounting future prospect at the rate of 25 per cent of the annual income of the victim, the general damages Rs. 70,000/- along with 10 % interest enhancing thereby and the interest to be calculated at the rate of 6% from the date of filing of the claim application till the date of its actual realization. The income of the deceased victim, working as a mason, considering the fiscal index in the year 2018 can be considered to be Rs.6,000/- per month which is not improbable. 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. 8,00,000/- is modified as follows:-

Monthly Income	=	Rs. 6000/-
Annual Income	=	Rs. 72,000/-
Future Prospect to be added (25%)	=	Rs. 18,000/-
		<u>Rs. 90,000/-</u>
1/4 th Deduction	=	<u>Rs. 22,500/-</u>

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Rs.67,500/-

Multiplier to be "14"	=	$\frac{X}{14}$
		Rs.9,45,000/-
General Damages	=	$\frac{\text{Rs. } 84,000/-}{\text{Rs.10,29,000/-}}$
Less Award	=	$\frac{\text{Rs. } 8,00,000/-}{\text{Rs. 2, 29,000/-}}$
Entitlement		

11. If the appellants/claimants withdrawn the compensation amount granted by the Learned Tribunal then the balance sum of sum of Rs.2,29,000/- 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.
12. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs.2,29,000/- along with 6% interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award passed by M.V. Act in the Court of Motor Accident Claims Tribunal, ADJ Special Court (E.C. Act), Paschim Medinipur in M.A.C.C No. 283/2018 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
14. The instant appeal is disposed of accordingly.
15. The Trial Court Records shall be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)