

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 995 OF 2012

With

**CAN 1/2012 (Old No. CAN 8352 /2012), CAN 2/2012 (OLD No.
CAN 8365 of 2012)**

The Oriental Insurance Co. Ltd.

Versus

Malati Dolai & Ors.

Soma

For the appellant : Mr. P.K. Pahari

For the Opposite Party

Nos. 1 and 2 : Mr. S. K. Pal

Heard on : 22.04.2024

Judgment on : 22.04.2024

Ajay Kumar Gupta, J:

1. It is submitted by the learned advocate appearing on behalf of the Appellant/Insurance Company that vide order dated 05.09.2012, the interim order of stay was granted by this Court subject to deposit of entire awarded amount less the statutory deposit already made with the learned Registrar General of this Court and in the event of such deposit, the interim order shall continue till disposal of the application for condonation of delay

2. In pursuance of the said order dated 05.09.2012, the Insurance Company has deposited Rs. 3,11,000/- vide OD challan No. 5949 dated 17.09.2012 on 04.12.2012. The statutory amount of Rs. 25,000/- has already been deposited vide OD challan NO. 5710 dated 28th August, 2012. It is further submitted that the instant appeal has been filed beyond the period of limitation. Accordingly, Appellant/Insurance Company has filed an application for

condonation of delay under Section 173 of the Motor Vehicles Act. He prays for condonation of delay.

CAN 1 of 2012 (Old No. CAN 8352 of 2012)

3. Heard both sides and being satisfied with the cause shown by the appellant in condonation application, let the delay be condoned.

4. Accordingly, **CAN 1 of 2012 (old No. CAN 8352 of 2012)** is, thus disposed of.

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5. It is the contention of the appellant that there is no dispute regarding the involvement of the offending vehicle No. WB 29/0488 on 09.06.1997 at 12.15 hours/12.20 hours and the mode and manner of the said accident. After adducing the evidence of the parties, the learned Tribunal finally awarded a sum of Rs. 3,86,000/- along with interest @ 6 per cent per annum from the date of filing of the case

that is from 27.09.2006 till realisation in full. Out of those amount, the claimants have already received Rs. 50,000/- in an application under Section 140 of the Motor Vehicles Act in equal proportion. The issue before this Court is only with regard to the deduction of the personal expenses of the victim, the learned Tribunal while assessing the total compensation has erred in deducting 1/3rd of the victim's personal living expenses from the annual income though it ought to be 1/2nd as the victim was unmarried at the time of accident. It is settled principles of law that when the victim is unmarried, his personal living expenses should be deducted 1/2nd of the total income of the victim. The Hon'ble Supreme Court also held the said provisions in **Pranay Sethi's Case (Supra)**¹.

6. Both sides did not dispute the legal provision of deduction of personal living expenses of the deceased, who died on account of motor traffic accident from his actual

¹ (2017) 16 SCC 680

income to arrive for calculation of compensation which is required to be awarded.

7. Upon perusal of record, it reveals while disposing claim application filed by the legal heirs and representatives of the deceased under Section 166 of the Motor Vehicles Act, 1988 being MAC Case No. 590/2006 praying for compensation, The learned Motor Accident Claims Tribunal, Special Court, Paschim Medinipur, after scanning and appreciation of evidence led by the parties, has finally come to conclusion that the claimants are entitled to get compensation from the Insurance Company of the insured vehicle being registration no. WB-29/0488 to the tune of Rs. 3,86,000/- and further directed to pay the claimants a sum of Rs. 3,36,000/- in equal share/proportion vide judgment and award dated 23rd day of December, 2011 as the claimants had already received Rs. 50,000/- in a proceeding filed under Section 140 of the M.V. Act. However, the learned Tribunal wrongly deducted the deduction of personal living expenses of the deceased as

1/3rd instead of 1/2nd from his total income as he was unmarried at the time of accident and it is settled provision of law.

8. No other issue raised by the parties.

9. Thus, keeping in mind the above observation, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Total Annual Income	Rs. 36,000/-
1/2 nd deduction of total annual income for personal living expenses	Rs. 18,000/-
Multiplier 16 (Rs. 18,000/- X 16)	Rs. 2,88,000/-

Add General Damages	Rs. 4,500/-
Total after adding General Damages	Rs. 2,92,500/-
Less Rs. 50,000/- already received in an application filed under Section 140 of the M.V. Act	Rs. 50,000/-
Total compensation	Rs. 2, 42,500/-

10. Thus, the Respondent/claimants are entitled to get compensation amount comes to Rs. 2,42,500/= (Rs. Two Lakhs Forty-Two Thousand Five Hundred Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 27.09.2006 till final payment.

11. Learned Registrar General, High Court, Calcutta shall release the amount in favour of the respondents/claimants upon proper identification and subject to verification of the

payment of ad valorem Court fees on the compensation amount, if not already paid, in the manner and mode of payment as stipulated by the learned Tribunal in its judgment and award dated 23rd day of December, 2011. It is further directed to release the balance amount along with accrued interest, if any, to the Appellant/Insurance Company within six weeks from this date.

12. Judgment and award dated 23.12.2011 is hereby modified to the aforesaid extent.

13. Accordingly, **FMAT 995 of 2012** is allowed without any order as to costs. Consequently, **CAN 2 of 2012 (Old No. CAN 8365 of 2012)** is, thus, disposed of.

14. Interim order, if any, stands vacated.

15. Let a copy of this order as well as Lower Court Records, if any, be forwarded to the learned Court below for information.

16. All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajay Kumar Gupta, J)

BR [AR(Ct.)]