IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 2243 of 2013

(FMAT No. 861 of 2013)

Najina Bewa Sk & Ors.

Vs

The United India Insurance Company Ltd. & Anr.

For the Appellants/ Claimants	: Mr. Biswarup Biswas.
For the Respondent No. 1/ Insurance company	: Mr. Parimal Kr. Pahari.
For the Respondent No. 2/ Owner	: None.
Hearing concluded on	: 10.07.2024
Judgment on	: 06.08.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by claimants/appellants against the judgment and award dated 28th day of May, 2013 passed by the learned Judge, Motor Accident Claims Tribunal and the Additional District Judge, 2nd Court, Nadia at Krishnanagar, Nadia (hereinafter called learned Tribunal Judge) in MAC Case No. 23 of 2010, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **Facts :-**

> *"The victim was coming back to his house riding a motor cycle sitting on the pillion. At about 11 a.m. at Bamundanga, a speeding Oil Tanker dashed the Motor cycle causing injury to the victim as a result of which he died on the spot.*
>
> *Police was informed about the accident and Nakashipara P.S. Case No. 574/09 was registered. According to the claimants, the victim was 45 years old, self employed man who used to earn Rs.4000/- per month. The offending vehicle was insured with O.P./Insurer. The claimants claim a sum of Rs.4,89,500/- towards compensation."*

3. O.P./owner did not contest the case, whereas the O.P./Insurer contested the case by filing written statement, denying all material allegations therein. It is contended by them that the case as filed is bad for defect of parties, non compliance of provision of Sections 147 and 149 of the M.V. Act. The driver of the offending vehicle was not rash and negligent in driving the vehicle. On the other hand, the victim was negligent and his negligence brought his death and as such, the claim application was liable to be dismissed.

4. The claimant no. 2 examined himself as P.W. 1 and proved relevant documents. The opposite parties did not adduce any evidence.

5. The learned Tribunal finally held as follows :-

"MAC Case No. 23 of 2010

Dated: 28.05.2013

Now, come to the question of quantum of compensation.

When it has been established that the victim Nasiruddin Sk died of road traffic accident by motor vehicle in use, I am of the view that the claimants are entitled to compensation. As the victim was 47 years old at the time of the accident, I take '13' as multiplier. As the claimants failed to prove the income of the victim, I am inclined to take Rs.3000/- as notional income per month. Thus, the yearly income of the deceased comes around Rs.36,000/-. One-third of the said income is to be deducted towards the personal expenditure of the deceased. Thus, the multiplied amount comes to Rs.3,12,000/-. In addition to that amount, the claimants are entitled to a sum of Rs.2000/- towards funeral expenses and a further sum of Rs.2500/- towards loss of estate. Thus, the aggregated amount comes to Rs.3,16,500/- and each of the claimant nos. 2 and 3 are entitled to Rs.1,05,500/- and claimant no. 1 being the widow of the deceased is entitled to a further sum of Rs.5000/- towards loss of consortium, and thus she is entitled to Rs.1,10,500/-. As the offending vehicle was insured with the O.P./Insurer, the O.P./Insurer is to indemnify the owner and pay compensation 4% @ with interest till payment is made.

Sd/-
Member,
Motor Accident Claim Tribunal &
Addl. District Judge, 2nd Court, Nadia"

6. Being aggrieved, the appellants preferred this appeal on the following ground :-

That the learned Tribunal did not take into consideration the actual income of the deceased and did not grant 'Just Compensation' as per law.

7. From the materials and evidence on record, the following facts are evident:-

i) The learned Tribunal held that the victim was **47 years old** at the time of accident, though the postmortem report **(Exbt-4)** shows **45 years.** As such **multiplier of 14** shall be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

ii) The accident having occurred on **08.12.2011.** The income of the deceased is taken as **Rs.4000/-** per month.

iii) **Future prospect** shall be **25%** of income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

iv) Number of claimants being **3**, **1/3rd** shall be deducted as personal expenses of the deceased. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))***

v) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of 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%)

8. Thus, the *"Just Compensation"* in this case would be as follows:-

Monthly Income	*Rs. 4,000/-*
Annual Income	*Rs. 48,000/-*

(4,000 x 12)	
Less : 1/3rd towards personal and living expenses	*Rs. 16,000/-*
	Rs. 32,000/-
*Add : Future prospects @ **25%** of the annual income of the deceased*	***Rs. 8000/-***
	Rs. 40,000/-
Multiplier x 14 *(40,000 x 14)*	***Rs. 5, 60, 000/-***
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. 6, 44, 000/-***

9. Admittedly, the Claimants/Appellants have received the amount of compensation of **Rs.3,21,500/-** 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. 3,22,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

10. 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.

11. The appeal being FMA 2243 of 2013/FMAT 861 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

12. No order as to costs.

13. All connected applications, if any, stand disposed of.

14. Interim order, if any, stands vacated.

15. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)