

cm

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 562 of 2023

National Insurance Company Ltd.

-Vs-

Avi Konra & Ors.

With

COT 76 of 2023

Dali Konra & Ors.

Vs

National Insurance Company Ltd & Anr.

For the Appellant/insurance co. : Ms. Sucharita Paul

For the respondent/claimants : Mr. Ashique Paul

Heard on : 05.09.2024

Judgment on : 05.09.2024

Ananya Bandyopadhyay, J. :-

1. The learned advocates for the appellant/insurance company as well as the respondents/claimants are present before the Court.
2. The instant appeal has been filed against the judgment and order dated 2nd February, 2023 passed by the learned Additional District & Sessions Judge, 3rd Court-cum Judge, Motor Accident Claims Tribunal, Purba Bardhaman in M.A.C. Case No. 06 of 2016.
3. The learned advocate for the appellant/insurance company submitted that the occurrence of the accident and the involvement of the offending vehicle along with other ancillary

issues concerning the driving licence, route permit etc. were not in dispute. However, the aforesaid learned advocate opposed the contention of the learned tribunal concerning the computation of the compensation amount considering the monthly income of the victim to be Rs. 5000/- which was not established through proper evidence. It was further submitted that the personal expenses of 1/4th of the annual income was not deducted from the future prospect.

4. The learned advocate for the respondents/claimants opposed the submission of the learned advocate for the appellant/insurance company.
5. The instant application was filed under Section 166 of the Motor Vehicles Act, 1988 by the respondents/claimants due to the death of the victim in an accident which occurred on 07th March, 2008 involving the offending vehicle being a truck bearing registration No. WB-41B/5011. Subsequently, the victim succumbed to his injuries at the age of 37 years.
6. The learned advocate for the appellant/insurance company contested the aforesaid application by filing written statement and cross examined the prosecution witnesses.
7. The learned advocate for the respondents/claimants submitted to have filed a cross objection being COT 76 of 2023 claiming enhancement of the monthly income of the deceased as Rs 9000/- per month instead of Rs. 5000/- as considered by the learned tribunal. The P.W. 1 in affidavit-in-chief claimed the

monthly income of the deceased to be Rs. 9000/- earning the same as a 'fish seller'. It is not possible for a person being engaged in the avocation of a 'fish seller' to produce relevant documents regarding his monthly income. However, considering the fiscal index at the relevant point of time of the accident in the year 2008, the monthly income of the deceased can be considered to be Rs. 4000/- per month.

8. Considering the observation of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*¹, the impugned award of Rs. 11,05,000/- is modified as follows:-

Monthly Income	Rs. 4,000/-
Annual Income	X 12

	Rs. 48,000/-
	- 12,000/-

Less: ¼ for Personal Expenses	Rs. 36,000/-
Add Future Prospects (40%)	Rs. 14,000/-

	Rs. 50,400/-
Multiplier to be "15"	15

	Rs. 7,56,000/-
Add: Non Pecuniary Damages	Rs. 77,000/-
Along with interest (10%)	-----
	Rs.8,33,000/-

--	--

9. It was further submitted by the Learned Advocate as aforesaid that the Appellant/Insurance Company has deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 15,39,133/- as per the challan filed by the learned advocate for the Appellant/Insurance company.
10. The respondents/claimants are entitled to receive the balance amount of Rs. 8,33,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the application till the date of actual realization.
11. The office of the learned Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present respondents/claimants in the proportion as mentioned in the impugned judgment dated 2nd February, 2023 passed by the learned Additional District & Sessions Judge, 3rd Court-cum Judge, Motor Accident Claims Tribunal, Purba Bardhaman in M.A.C. Case No. 06 of 2016 on proof of proper identification of the respondents/claimants subject to payment of *ad valorem* Court fees and refund the balance amount if any through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.
12. The interest accrued on the sum of money deposited by the Appellant/Insurance company at the office of the Learned

Registrar General, High Court at Calcutta which was further deposited in the Nationalized Bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on Rs. 8,33,000/-is to be disbursed in favour of the respondents/claimants and the balance sum of interest to be refunded to the Insurance Company through distinct account payee cheques.

13. The instant appeal being FMA 562 of 2023 and COT 76 of 2023 is disposed of.
14. The trial court records be sent to the concerned tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)