**IN THE HIGH COURT AT CALCUTTA**

**CIRCUIT BENCH AT JALPAIGURI**

**(CIVIL APPELLATE JURISDICTION)**

PRESENT:

**THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**FMAT 50 of 2021**
**With**

**IA No. CAN 1 of 2022**

**The Oriental Insurance Co. Ltd.**
**Vs.**
**Shila Roy@ Shilpa & Ors.**
**With**
**C.O.T. 3 of 2023**
**Shila Roy @ Shilpa & ors.**
**Vs.**
**The Oriental Insurance Co. Ltd. & Anr.**

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|---|---|---|
| For the Appellant Insurance Company and for the Respondent in COT 3 of 2023 | : | Mr. Rishin Chakraborty |
| For the Respondents and for the Appellants in FMAT 50 of 2021 | : | Mr. Subir Banerjee |
| Heard on | : | 20.08.2024 |
| Judgment on | : | 23.08.2024 |

**Ajoy Kumar Mukherjee, J.**

**1.** Being aggrieved and dissatisfied with the judgment and award dated 18th September, 2021 passed by Learned MAC Tribunal 3rd Court Jalpaiguri in MAC case No. 414 of 2017 under section 166 of the Motor Vehicle Act

1988, present appeal has been preferred by the Oriental Insurance Company Limited. By the order impugned learned Tribunal below has awarded compensation of Rs. 28,68,944/- towards compensation for the road traffic accidental death of victim Chandan Roy. The insurance company/appellant got aggrieved mainly on the ground that the learned Tribunal failed to appreciate that the victim was aged about 29 years at the time of his death and as such multiplier applicable in the said case would be 17 instead of 18.

**2.** He further submitted that the motor cycle driven by the deceased collided with another offending motor cycle which was travelling in the opposite direction and therefore, there was contributory negligence of the deceased motor cycle driver and for which appropriate deduction from the total assessment of compensation is to be made.

**3.** By filing cross appeal being COT 3 of 2023 the claimants contended that the awarded compensation amount should be Rs.32,00000/- and that the future prospect of the victim should be assessed 50% of the compensation amount instead of 40%. Furthermore medical allowance should have been awarded Rs. 2,03,400/- instead of Rs.1,60,000/-. In the cross appeal it has also been specifically urged by the claimants that no interest was awarded on the compensation amount and the Tribunal has erred in law and in awarding default interest Tribunal below ought to have awarded 12% interest upon awarded compensation from the date of filing the claim application till the date of payment.

**4.** I have considered submissions made by both the parties.

**5.** It appears from the judgment impugned that the Tribunal has specifically mentioned that the age of the victim was 29 years. Following the judgment delivered in ***Sarla Verma's Case (AIR 2009 SC 3104)*** the appropriate multiplier would be 17 and accordingly the appellant has rightly pointed out that the Tribunal has erred in using multiplier 18 while calculating the compensation amount.

**6.** Though the appellant/insurance company have alleged about contributory negligence but no such plea was taken before the court below nor any evidence was adduced in support of the contributory negligence and as such I find no substance in the aforesaid contention of the appellant that the victim has contributed negligence in causing the accident.

**7.** Now in respect of cross appeal preferred by the claimants herein it appears that though the claimants in cross appeal have claimed 50% toward future prospect but I find that according to the judgment delivered in **Pranay Shetty's Case, (2017) 16 SCC 680**, the court below has correctly assessed the future prospect at the rate of 40% since PW-3 clearly stated that victim was a fixed salaried person. Though claimants have prayed for medical expenses to the tune of Rs.2,03,400/- but I find from the evidence of PW-4 and the documents marked exhibit 14 that the claimants actual paid Rs. 1,60,000/- towards medical expenses and accordingly I find that the said contention made by claimants is cross appeal has also got no substance.

**8.** In such view of the matter the actual income of the victim would be Rs. 13,090 x12 x 17= Rs.26,70,360/-. If $1/3^{rd}$ of the said amount is deducted towards personal expenses then the amount would be

Rs.17,80,240/-. If 40% of this amount is awarded in terms of **Pranay Shetty's Judgment** towards future prospect the amount comes down to Rs.24,92,336/-. The claimants have incurred medical expense of Rs. 1,60,000/- and as per judgment passed in **Pranay Shetty's case** the claimants are entitled to get a fixed sum of Rs.15,000/- towards loss of estate and a sum 15,000/- toward funeral expenses and also a sum of Rs. 40,000/- towards loss of consortium and as such total amount of compensation comes down to Rs.27,22,336/-.

**9.** Now let me take up the claimants another ground of appeal wherein he has alleged that the Tribunal below has not awarded any interest upon the compensation amount but only in case of default in payment of the compensation within 15 days the claimants are awarded interest at the rate of 6% per annum.

**10.** Accordingly the cross appeal revolves around a very short issue as to whether the tribunal was justified in not awarding any interest upon the compensation amount from the date of filling of the application. Under section 171 of the act of 1988 it is clear that where the claim of compensation has been allowed under the Act, the Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate from such date not earlier than the date of making claim.

**11.** In ***National Insurance Company Limited Vs. Keshab bahadur*** reported in (**2004) 2 SCC 370** it was held that even though the expression "may" is used a duty is laid on the tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case and it was clearly held in the said judgment that the provision of payment of interest is discretionary and is not and cannot be bound by rules. In section 171 no rate of interest has been prescribed and the duty has been bestowed upon the court to determine such rate of interest.

**12.** In the case of ***Abati Bezbaruah Vs. Deputy Director General Geological survey of India and another*** reported in (**2003) 3 SCC 148** it was held that the question as to what should be the rate of interest in the opinion of the tribunal would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

**13.** In the present case the accident took place in the month of September, 2017. Considering the average Bank's fixed deposit interest rate prevailing from 2017-2018 onwards I find that the claimants are entitled to get 6% simple interest on the compensation amount from the date of filing the application as there is nothing to show that the delay was caused due to any fault on the part of the claimants. I am also inclined to grant interest upon awarded amount from the date of making of the claim application as on the failure on the insurance company to secure the same the claimant have to approach the tribunal for a decision on contest and in such backdrop there is no reason why the claimants would be declined to award interest, when the Tribunal finally allows the claim petition and awards amount which it find due and payable to the claimant.

**14.** In such view of the matter the **FMAT No. 50 of 2021** along **COT 3 of 2023** are hereby disposed of with the observation that the opposite party no. 2/Oriental Insurance Company Limited will pay total compensation amount of Rs. 27,22,336/- along with 6% simple interest from the date of filing of the claim application till the date of actual payment in the mode and manner as indicated in the order impugned.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**(AJOY KUMAR MUKHERJEE, J.)**