

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Ananya Bandyopadhyay

F.M. A. 938 of 2023

Sreemoni Oraon

-Vs.-

United India Insurance Company Limited & Anr.

For the appellant/claimant : Mr. Saidur Rahaman

**For the respondent/
Insurance Company : Mr. Guddu Singh**

Heard On : 26.02.2025

Judgment on : 26.02.2025.

Ananya Bandyopadhyay, J.

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal has been filed against the judgment and award dated 31st August, 2022 passed by the learned Judge, Motor Accident Claims Tribunal cum 5th Court, Malda in M.A.C. Case No. 174 of 2016.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant on account of the death of the victim who died in an accident which occurred on 06.04.2016 at about 18:00 hours near Rahutara Bus Stand on State Highway under

Habibpur Police Station, District : Malda with the involvement of a TATA 407 Mini Truck bearing registration No.WB-61/0352 which while exceeding rashly and negligently, hit the victim who had been a pillion rider of a vehicle and sustained injuries as also succumbed to the same at Malda Medical College and Hospital.

4. The Learned Advocate representing the appellant/claimant submitted to have filed the instant appeal seeking for an enhancement of the monthly income of the victim who served as a daily labourer being self-employed earning a sum of Rs.5,000/- per month. Contrary to the decision of the learned Tribunal to assess his monthly income as Rs.3,000/- per month, the learned Advocate representing the respondent-Insurance Company controverted the submission of the learned Advocate representing the appellant-claimant stating that in absence of documentary evidence, the Tribunal was justified in computing the monthly income of the victim to be Rs.3,000/- per month as notional income. Learned Advocate representing the appellant-claimant further submitted that the learned Tribunal erroneously failed to grant any amount towards the component of future prospect and the amount was non-pecuniary damages, instead of the multiplier being 18, the same had been

computed as 17 with regard to the age of the victim at the time of death to be 22 years.

5. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of considering the monthly income of the victim at the relevant date and time of occurrence of the accident. The accident occurred on 06.04.2016. The prosecution witnesses did not refute each other in their deposition with regard to the avocation of the victim being a daily labourer. Considering the fiscal index at the relevant time, a person working as a daily labourer could have earned sum of Rs.5,000/- per month and the same would not have been improbable.

Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 3,21,000/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	Rs. 60,000/-
Future Prospect to be added(40%)	Rs. 24,000/-
	Rs. 84,000/-
Deduction	Rs. 42,000/-
Personal Expenses (50%)	
	Rs. 42,000/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Multiplier to be "18"	Rs. 42,000/- X 18 Rs. 7,56,000/-
General Damages	Rs. 36,000/-
Less Award	Rs. 7,92,000/- Rs. 3,21,000/-
Entitlement	Rs. 4,71,000/-

6. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 3,21,000/-. The appellant/claimant is entitled to a sum of Rs. 4,71,000/- along with interest at the rate of 6% per annum to be paid from the date of filing of the application till the date of its actual realization.
7. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,71,000/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .
8. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum 5th Court, Malda in M.A.C. Case No. 174 of 2016 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.

9. The instant appeal is disposed of accordingly.
10. The pending applications if any stands disposed of.
11. Copy of the order be sent to the Department as well as learned Tribunal for information.

(Ananya Bandyopadhyay, J.)

**Mithun/cm
A.R.(Court)**