Form No. J(2)
Item No. DL / 167
ARPAN – A.R.(CT/)
C.M. A.R. (CT)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

Present: The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No.659 of 2019

Anjana Bal (Tamang) & Others

Vs.

The Oriental Insurance Company Limited & Others

For the Appellant	:	Mr. Laltumohan Ghosh, Adv.
For the Respondent	:	Mr. Parimal Kumar Pahari, Adv.
Heard On	:	13.06.2025 & 23.07.2025
Judgment On	:	23.07.2025

Ananya Bandyopadhyay, J.:

1. Both the Learned Advocates representing the parties are present in Court.

2. The instant appeal had been filed against the judgment and award dated 22nd September, 2015 passed by the Learned Judge, Motor

Accident Claims Tribunal-cum-Additional District Judge, 3rd Court, Darjeeling in Motor Accident Claim Case No.31 of 2008.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 30th April, 2007 at about 12:30 hours within the jurisdiction of Rangli Rangliot Police Station, District - Darjeeling with the involvement of the offending vehicle being a Tata Sumo bearing registration no. WB/76/3700 which approached at an exceeding speed rashly and negligently and collided with the motor cycle bearing registration no. WB/74K/7513 being driven by the victim resulting in serious injuries sustained by him, who was subsequently hospitalised at North Bengal Neuro Research Centre Pvt. Ltd. District – Darjeeling and expired on 13th May, 2007.

4. The Learned Advocate representing the appellants/ claimants submitted to have file the instant appeal exclusively on the ground that the learned Tribunal did not consider the income tax return marked as Exhibit – 11 collectively and assessed the compensation on the basis of the notional income is to be Rs.15,000/- per year.

5. Learned Advocate representing the respondent No.1/ Insurance Company submitted that the Learned Tribunal had rightly observed that the deceased victim did not pursue any kind of business as claimed by the same since the claimants failed to produce any

document concerning trade license, registers etc. corroborating the claim of the avocation of the deceased victim to be a business man.

6. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/Insurance Company, this Court restricts itself only to the extent of issues agitated by the respective parties.

7. Learned Tribunal, *inter alia*, observed as follows:

> "***The PW 1 in her examination in chief on affidavit mentioned that her husband used to run a grocery shop and submitted Income Tax Return. The Claim petition depicts that Palzer Bal's occupation was business and Government Contractor. It is to mentioned here that the Claimants, particularly the PW 1 did not file any Trade License for running any kind of business including Grocery Shop business or License to work as Government Contractor in respect of Palzer Bal, since deceased, before the court during trial to establish conclusively that Palzer Bal had business of Grocery Shop or he was a Government Contractor. The Claimant Party filed two sets of Income Tax Return and those marked as Exbt.11. It is found that those Returns for the Assessment Year 2006-2007 and 2006-2006. Both the Returns show that the Assessee Palzer Lama (Tamang) did not pay Income Tax in those two Assessment Years. It can be said that the Claimants could produce and prove various Registers, which***

> ***are required to maintain by a businessman, he may be a Government Contractor or Grocery Shop owner, to show the transactions or such business and earning of the Owner from such business. It can be said that any person having low income or non-taxable income, can submit Income Tax Return against his or her PAN Card but it can be said that such Income Tax Return showing non-taxable income cannot help to form opinion that the said Assessee or individual actually earned that amount of money unless he or she produces before the court relevant register showing the turnover of his or her business of a particular year***."

8. Though the deceased victim did not pay the income tax for the assessment year 2006-07 and 2005-06. However, the income tax return for the assessment year 2006-2007 was filed on 30th March, 2007 prior to the date of the accident. The annual income with regard to the assessment year 2006-07 referred to as Rs.97,830/- which approximately determines the sum of Rs.8,000/- and odd to have been earned by the deceased victim per month pursuing his grocery shop and the same cannot be improbable.

9. Considering the observations of the Hon'ble Apex Court in ***National insurance company Ltd. vs. Pranay Shetty & Anr***[1] and ***Sarala Verma & Ors. vs. Delhi Transport Corporation & Anr***[2].the impugned award of Rs. 1,80,000/- is modified as follows:

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[1] *2017(4) TAC 673 (S.C)*
[2] *(2009) 6 SC 121*

Yearly Income	Rs. 97,830/-
Add 40% Future Prospect	+ Rs. 39,132/-
	Rs. 1,36,962/-
Less 1/3rd for Personal Expenses	- Rs. 45,654/-
	Rs. 91,308/-
Multipliers 16	**x** 16
	Rs. 14,60,928/-
Add General Damages	+ Rs. 77,000/-
	Rs. 15,37,928/-
Already Paid	- Rs. 1,80,000/-
	Rs. 13,57,928/-

10. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 1,80,000/-. The appellants/claimants are entitled to a sum of Rs. 13,57,928/- along with interest at the rate of 6 per cent per annum to be paid from the date of filing of the claim application till the date of realization. In view of the observation of the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors.**[3] the appellants/claimants are to provide the details of Bank Accounts held in the name of the appellants/claimants at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

11. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 13,57,928/- along with interest before

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the office of the learned Registrar General, High Court at Calcutta within two months from the date of passing of this order.

12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter disburse the same directly to the bank accounts of the present appellants/claimants as mentioned in the impugned judgment and order passed by the Learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 3rd Court, Darjeeling in Motor Accident Claim Case No.31 of 2008 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* court fees within four (4) weeks.

13. The instant appeal is disposed of accordingly.

14. The pending applications, if any, stands disposed of.

15. The TCR be sent down to the concerned Tribunal forthwith.

16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)