

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 155 of 2017

Asish Paul @ Asish Kr. Paul

v.

National Insurance Co. Ltd., C.R.O.-II & Anr.

For the Appellant/
Insurance Company

: Mr. Ashique Mondal
: Mr. Shahmeraz Alam

For the Respondent no.1/
Claimant

: Mr. M.P. Chakraborty
Ms. Ratnadipa Karmakar

Heard on

: 13th March, 2025

Judgment on

: 22nd April, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been preferred against the impugned judgment and award dated 30th June, 2016 passed by the Motor Accident Claims Tribunal (Learned Additional District Judge, 17th Court) at Alipore in MAC Case No.493 of 2003 and thereafter MACC Case No.3 of 2008.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant/victim on account of an accident sustained by him on 20th May, 2002 on Egra-Howrah Road near Kharui Bazar with the involvement of an offending vehicle being a Bus bearing registration No.WB-11/9741, which at an exceeding speed rashly and negligently hit the victim while he was driving a Ambassador Car from behind. The victim/claimant consequently suffered injuries to the extent of 40%, as assessed by the Medical Board at Egra S.D. Hospital.
4. The Learned Advocate representing the appellant/claimant submitted that contrary to the claim of the victim/claimant being a Driver by profession earning Rs.5,000/- per month, the learned Tribunal had considered the notional income to the extent of Rs.3,000/- per month. Moreover, the 40% physical disability considered by the Medical Board was to the detriment of the victim/claimant since the incapacitation affects him to pursue his profession as a Driver, which otherwise should have been considered to be 50%. It was further submitted that an inadequate sum of Rs.50,000/- was granted for pain and suffering, which should be enhanced.
5. The Learned Advocate representing the respondent no.1/insurance company submitted that the learned Tribunal after assessing the oral and documentary evidence on record in absence of

corroboration with regard to the profession of the victim as a Driver had rightly computed the compensation amount, which should not be interfered with.

6. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent as agitated by the Learned Advocates representing the both the parties. The circumspection of the oral and documentary evidence on record revealed that the learned Tribunal had taken into account on the relevant factors. However, considering the fiscal index prevalent in the year of 2002, the victim/claimant working as a Driver and the profession had not been rebutted is entitled to Rs.3,500/- to be constituted as the monthly income, which will not be improbable.

7. *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. 4,45,600/- is modified as follows:*

Monthly Income	Rs. 3,500/-
Annual Income (Rs. 7,670 x 12)	<u>x 12</u>
	Rs. 42,000/-
	<u>Rs. 21,000/-</u>
Future Prospect to be added	Rs. 63,000/-
	<u>Rs. 63,000/-</u>
Multiplier to be "16"	<u>X 16</u>
	<u>Rs. 10,08,000/-</u>

¹ **1 2017(4)TAC 673(S.C)**

² (2009) 6 SC 121

Disability 40%	Rs. 4,03,200/-
Medical expenses to be added	Rs. 50,000/-
Non-pecuniary damages	Rs. 50,000/-
	Rs. 5,03,000/-
Less amount received	Rs. 4,45,600/-
Entitlement	Rs. 58,600/-

8. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 4,45,600/-. The appellant/claimant is entitled to receive the balance amount of Rs.58,600/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 20.01.2003 till the date of actual realization.

9. The Learned Advocate for the respondent No.1/insurance company is to deposit Rs. 58,600/- 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.

10. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the Motor Accident Claims Tribunal (Learned Additional District Judge, 17th Court) at Alipore in MAC Case No.493 of 2003 and thereafter MACC Case No.3 of 2008 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Courts fees within six weeks.

11. The instant appeal is disposed of accordingly.
12. The pending applications, if any, stands disposed of.
13. The TCR be sent down to the concerned tribunal forthwith.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

S.R.