

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

FMA 450 of 2009

Smt. Mamata Das and Others

-Versus-

New India Assurance Company Ltd. and Another

For the Appellants : **Mr. Krishanu Banik.**

For the Respondents : **Mr. P. K. Pahari**

Delivered On : **27.02.2025**

Prasenjit Biswas, J:-

1. The judgment and award dated 5th July, 2008 passed by the learned Motor Accident Claims Tribunal, Fast Track 6th Court, Malda in connection with M.A.C. Case No. 360/05 is assailed in this appeal.

2. By passing the impugned judgment the learned Tribunal dismissed the claim application filed by the claimants. Being aggrieved and dissatisfied with the said

judgment the present appeal has been preferred at the behest of the appellants/claimants.

3. The victim Subal Chandra Das faced an unnatural death due to road traffic accident which was happened on 29.06.2005. On the fateful day the victim was going to Gosaihat by hiring the offending mini truck being no. WB-65/0941 on which he boarded with his business goods for going to his business place. The offending truck was running with high speed in rash and negligent manner for which the victim fell down on the road near Bablabona and received several injuries on his head. Immediately after the incident the victim was taken to Malda Sadar Hospital and subsequently, he was referred to a Teaching Institution. Thereafter, the victim was taken to Bellona Nursing Home in Kolkata where his operation was done. It is said that after the incident the petitioner was confined to bed and sustained bedsore. On 01.11.2005 he was again admitted to Malda Sadar Hospital and he was discharged from there on 06.11.2005 and he expired on 20.11.2005.

4. The instant claim case was initially filed by the victim himself and after his death his heirs/legal representatives were brought on record and substituted in the place of the victim. The claim application filed by the claimants was dismissed by the learned Tribunal on the ground that no document was filed in this case to show that there was a nexus between the accident and death of the victim as well as there is no document filed on behalf of the claimants to show that the victim became a permanent disabled person. Learned Tribunal also held that no document was filed by the claimants to show that the victim hired the offending vehicle as it was claimed in the application for getting compensation.

5. Mr. Krishanu Banik, learned Advocate appearing on behalf of the appellants submitted that the learned Tribunal did not consider the documents and depositions

filed before it and as such the impugned award is bad in law and is liable to be set aside. It is further submitted by the learned Advocate that the learned Tribunal was wrong in holding that even with preponderance of probability it cannot be said that the victim died because of the motor vehicle while on use and this observation of the Tribunal cannot be sustainable in the eye of law. It is further assailed by the learned Advocate that immediately after accident the victim was admitted to Malda Sadar Hospital and subsequently, he was treated at Bellona Nursing Home, Kolkata and operation was done on his neck and due to such accident, the victim was confined to bed and sustained bedsore. For such reason the victim was again admitted to Malda Sadar Hospital and was there till 06.11.2005 and thereafter he expired. This aspect was not taken into account by the learned Tribunal. So, he submits that the impugned judgment and award passed by the Tribunal is not tenable under the provision of law and it may be set aside.

6. Learned Counsel appearing on behalf of the respondent/Insurance Company submits that there is no illegality or material irregularity in the impugned judgment passed by the learned Tribunal and there is nothing in the record for which the said finding of the learned Tribunal is to be interfered. It is further said by the learned Advocate for the Insurance Company that the appellants/ claimants were hopelessly failed to prove the nexus between the accident and the death of the victim. As per submission of the learned Advocate that no such document was brought on record by the appellants to show that the death of the victim was caused due to the injury sustained by the victim in the road traffic accident.

7. Despite service effected upon the owner of the offending vehicle he did not venture to contest the claim application either before the Tribunal or before this Court.

8. In this case only one witness was examined on behalf of the appellant and documents were exhibited as exhibits nos. 1 to 5 on behalf of the appellants/claimants. Neither any oral nor any documentary evidence was adduced on behalf of the respondent/Insurance Company.

9. From the certified copy of FIR and charge-sheet it appears that an accident took place on 29.06.2005 when the victim was going to Gosaihat by hiring the offending mini truck being no. WB-65/0941. The said accident took place due to rash and negligent driving of the offending vehicle and as a result the victim fell down on the road and sustained injury on his person. From the discharge certificate and the injury report which was marked as exhibits 4 and 5 it would appear that immediately after accident victim was taken to Malda Sadar Hospital and thereafter, he was transferred to Bellona Nursing Home, Kolkata wherein he was admitted for a certain period and operation was done on his neck. PW 1 stated in his evidence that on the fateful day his father was travelling by the offending vehicle and he boarded the vehicle with various articles for going to Gosaihat. On the way the vehicle met with an accident as it was proceeding with high speed and as a resultant effect the victim fell from the vehicle and sustained severe injuries on his person. As per deposition of PW 1 the victim was firstly admitted into Malda Sadar Hospital and thereafter, he transferred and treated at Bellona Nursing Home at Kolkata. It is further said by the said witness that his father was confined to bed after coming to Malda and sustained bedsore and for such reason the victim was again admitted to Malda Sadar Hospital with symptoms of bedsore and he was there in the hospital for 6 days. The victim died on 20.12.2005 and as per his deposition his father died due to the said road traffic accident. It appears from the FIR and charge-sheet that immediately after the incident concerned police station started a case being

Kaliachak P.S. Case No. 160/05 dated 02.07.2005 under Section 279/338 of the Indian Penal Code. So, the involvement of the said vehicle cannot be ruled out. From the injury report (exhibit 4) it appears that the victim sustained injuries due to road traffic accident on 29.06.2005 and particularly he sustained injuries on his neck and subsequently he was referred to Teaching Institution. It appears that the victim was admitted at Malda Sadar Hospital on 29.06.2005 and thereafter he was taken to Bellona Nursing Home, Kolkata wherein he was treated from 30.06.2005 to 11.07.2005 and an operation was done on his neck in that hospital. It also appears from the deposition of PW 1 that due to such accident the victim was confined to bed and as a result he sustained bedsore. The victim was again compelled to admit at Malda Sadar Hospital and was admitted therein for 6 days. The date of death of the victim was 20.12.2005. From the oral as well as documentary evidence it appears that road traffic accident was happened on 29.06.2005 and from the FIR and charge-sheet it would be clear that the victim sustained injury due to rash and negligent driving of the offending mini truck and for which he was admitted into hospital and the nursing home. On the other hand, no such document was brought on record by the respondents/Insurance Company to show that the victim did not sustain injuries due to the said road traffic accident and the offending vehicle was not involved in that accident. Admittedly, the victim in the present case sustained injuries in the said road traffic accident caused by the offending vehicle which was insured on the date of accident with the respondents/Insurance Company. From the medical papers it appears that immediately after accident the victim was admitted into Malda Sadar Hospital and thereafter, he was taken to Bellona Nursing Home at Kolkata wherein he was admitted for a certain period of time and an operation was done. As per deposition of PW 1 that immediately after releasing from Bellona Nursing Home he

was taken to Malda but his father was confined to bed and for which he sustained bed sore. The victim was again taken to Malda Sadar Hospital and was admitted therein for 6 days and subsequently died on 20.12.2005. The chain of circumstances as narrated above clearly shows that the victim sustained injury on his person and was treated in hospital and nursing home at Kolkata and due to such accident, he was confined to bed and sustained bed sore and the victim subsequently expired on 20.12.2005. So, it cannot be said that there is no nexus between the accident and the death of the victim and all the incidents from the very date of accident it indicates that the victim died due to the road traffic accident in which he sustained injuries. Learned Tribunal held that no documents was filed on behalf of the appellants/claimants that the victim became a permanently disabled person due to such accident but when all the incidents as referred above shows that victim sustained injury on his person due to road traffic accident and for such injury he was confined to bed and was unable to move and discharge the normal function of a person then it can be safely held that the victim died as a consequence effect of the road traffic accident in which he sustained injuries on his person.

10. The learned Tribunal held that the appellants/claimants failed to prove by any documentary evidence that the victim hired the vehicle by which he was going to Gosaihat. From the FIR and charge-sheet it appears that the victim boarded the offending vehicle and was going to his market place at Gosaihat and the said vehicle was running in rash and negligent manner and for which the victim fell down on the road and sustained injuries on his person. From the evidence of PW 1 it would appear that his father was going to Gosaihat by boarding on the offending vehicle. No document was produced on behalf of the respondent/Insurance Company to show

that the victim was a gratuitous passenger of the offending vehicle and no evidence was brought on record to that extent.

11. In view of the above discussion as made above the order of dismissal passed by the learned Tribunal is liable to be set aside.

12. Now the determination of compensation is to be considered while dealing with such determination following aspects are to be taken into account.

I. Monthly income of the deceased.

II. Multiplier.

III. Future prospect.

IV. General damages.

V. Medical expenses.

13. So far as income is concerned as per the claim of the application and the evidence adduced by PW 1 (son of the victim) that at the time of death the victim used to earn Rs. 3,000/- per month. Considering the economic factors prevalent at the time of accident in the year 2005, I am of the opinion that the income claimed by the claimant is reasonable and should be accepted.

14. It appears from the exhibit 1 i.e. certificate of death of the victim which shows that at the time of death the victim was aged about 50 years and as such following the observation of the Hon'ble Apex Court in case of **Sarla Verma (Smt) And Others vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121** the multiplier should be 11.

15. At the time of incident, the victim was between the age group of 50 to 60 years and as per decision of the Hon'ble Apex Court in case of **Pranay Sethi and Others** the victim was entitled to future prospect to be assessed as 10% of his annual income.

16. In addition to this the claimants are also entitled to general damages on conventional heads namely loss of estate, loss of consortium and funeral expenses which should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively as per decision of the Hon'ble Apex Court rendered in case of **Pranay Sethi (supra)**. The aforesaid amounts should be enhanced @ 10% in every 3 three years as directed by the Hon'ble Apex Court in the said case.

17. At the time of deposition PW 1 deposed that they have spent more than Rs. 1 lakh for the treatment of the victim. At the time of hearing the attention of the Court is drawn by the learned Advocate for the appellants to an un exhibited document which was issued by the Bellona Nursing Home and Diagnostic Center for the treatment of the victim Subal Chandra Das. It is said by the learned Advocate that appellants are also entitled to medical expenses to the tune of Rs. 55,095/- in addition to the other entitlement as indicated hereinabove. Although the said document was not proved on behalf of the appellants as exhibit before the tribunal but on considering the said document, I find that an amount of Rs. 55,095/- has been actually incurred at medical expenses and strict prove of that document as per provision of law can be waived. Accordingly, I find that claimants are entitled to get of Rs. 55,095/- under the heading medical expenses.

Assessment of Compensation

1.	Monthly Income be assessed as	Rs. 3,000/-
2.	Annual Income be assessed as Rs. (3,000/-X 12)	Rs. 36,000/-

3.	Future Prospect be assessed 10% i.e.	Rs. 3,600/-
4.	Total	Rs. 39,000/-
5.	Deduction 1/4 th on account of own personal Living expenses. (39,600 – 9,900)	Rs. 29,700/-
6.	Use of multiplier as per age of the deceased 11 (29,700/- X 11)	Rs. 3,26,700/-
7.	General damages as per Pranay Setthi Case is Rs. 70,000/- (Rs. 15,000/- for loss of estate, Rs. 15,000/- for funeral expenses, Rs. 40,000/- for loss of consortium) and every three years there should be 10% increase of the amount.	Rs. 84,000/-
8.	Medical expenses	Rs. 55,095/-
9.	Total	Rs. 4,65,495/-

18. Thus, the claimants are entitled to compensation or Rs. 4,65,795/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

19. Respondent no. 1/ Insurance Company is directed to deposit the aforesaid compensation together with interest as indicated above by way of cheque in favour of the appellants/claimants in equal share after making payment of spousal consortium in favour of the wife of the deceased before the learned Registrar General, High Court, Calcutta within a period of 6 weeks from the date.

20. Upon deposit of the aforesaid amount the learned Registrar General, High Court, Calcutta shall release the said cheques in favour of the appellants/claimants upon satisfaction of their identities and after payment of Court fees if not paid earlier.

21. Accordingly, the impugned judgment and award passed by the Tribunal dated 5th July, 2008 passed in connection with M.A.C. Case No. 360/05 is hereby set aside. The appeal is thus allowed.

22. All connected applications, if any, stand disposed of.

23. Let a copy of the judgment be forwarded to the learned Tribunal along with lower Court records for information.

24. Urgent Photostat certified copy of this impugned judgment be given to the parties upon compliance of all legal formalities.

(Prasenjit Biswas, J.)