

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 236 of 2006

**Jayanti Mahata
Versus**

The National Insurance Company Ltd. & Anr.

For the Appellant : Mr. Rabindranath Mahata
Mr. Aritra Shankar Ray

For the Respondent No.1/
Insurance co. : Mr. Parimal Kumar Pahari.

Heard & Judgment on : 13th March, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the appellant and the respondent No.1 are present.
2. None appeared to represent the respondent No.2/insurance company.
3. The instant appeal had been filed against the judgment and award dated 20th September, 2005 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 6th Court at Midnapore in M.A.C. Case No. 672 of 2002.

4. An application under Section 166 of the Motor Vehicles Act had been filed by the injured victim on account of an accident which occurred on 14.01.2002 at about 7.15 a.m. near Amit Motors at Inda, within the jurisdiction of Kharagpur(T), in the District of Paschim Medinipur, with the involvement of the offending vehicles being mini truck bearing registration No. WB-33-6024 and Maruti van bearing registration no. WB-68B/3953 in which the victim was a traveler. The victim was admitted at Midnapore Sadar Hospital wherefrom she was referred to N.R.S Medical Collage and Hospital. However, she could not be admitted therein and was admitted at Peerless Hospital, Kolkata whereby she underwent an operation due to fracture sustained by her in her right leg.
5. Learned Advocate representing the appellant/claimant submitted that the learned Tribunal did not consider the aspect of future prospect to have been granted in favour of the victim and the interest on the compensation amount was also not granted.
6. The learned Advocate representing the respondent No.1/Insurance Company submitted that the victim failed to produce valid medical documents with regard to the extent of injury suffered by her as claimed in the application under Section 166 of the Motor Vehicles Act to have been 50%. More-over, the income of the victim as well as her avocation could not be proved. The learned Tribunal had

justifiably determined the compensation amount. However, the interest should have been considered.

7. Evidently, the victim could not prove her income as well as avocation. More-over, the extent of disability suffered by her was also not proved. However, the occurrence of the accident is not disputed and the victim must have suffered considerable pain and agony and this Court restricts itself only to the extent of increasing the amount of Rs. 12,000/- granted on account of pain and suffering of the victim to the extent of Rs. 25,000/-. The other elements which have already been assessed by the Learned Tribunal have not been interfered with. The victim is entitled to the compensation amount of Rs. 13,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application under Section 166 of the Motor Vehicles Act.

8. 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. 2,65,378/- is modified as follows:-

Medical Expenses	Rs. 2,68,378/-
Boarding Charges	Rs. 10,000/-
Pain & Suffering	Rs. 25,000/-
Payment made under Section 140 Of the Motor Vehicles Act, 1988	Rs. 3,03,378/-
	Rs. 25,000/-
Less Award	Rs. 2,78,378/-

¹ **1 2017(4)TAC 673(S.C)**

² (2009) 6 SC 121

Entitlement	Rs. 2,65,378/-
	Rs. 13,000/-

9. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 2,65,378/-. The appellant/claimant are entitled to a sum of Rs. 13,000/- and the appellant/claimant further entitled the interest at the rate of 6% per annum to be paid from the date of filing of the claim application till the date of its actual realization upon Rs. 2,78,378/-.
10. The Learned Advocate for the respondent No.1 and 2/insurance company is to deposit the balance sum of Rs. 13,000/- 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.
11. 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 Additional District Judge, 6th Court at Midnapore in M.A.C. Case No. 672 of 2002 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court's fees.
12. The instant appeal is disposed of accordingly.
13. The pending applications if any stands disposed of.
14. The TCR be sent down to the concerned Tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

c.m AR. Ct.