In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 9 of 2014
IFFCO Tokio General Insurance Co. Ltd.
Versus
Arpita Mitra & Ors.

With

COT 20 of 2022

Arpita Mitra & Ors.

Vs.

IFFCO Tokio General Insurance Co. Ltd.& Anr.

Mr. Rajesh Singh
…for the Appellant/Insurance Company.

Mr. Saidur Rahaman
…for the Respondent Nos. 1 to 3/Claimants.

Heard on : 19th February, 2025

Judgment on : 7th April, 2025.

Ananya Bandyopadhyay, J:-

1. Both the learned Advocates for the appellant/insurance company and the respondents/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 14th August, 2013 passed by the learned Judge, Motor Accident Claims Tribunal cum Fast Track Court-3, Barasat, North 24-Parganas in M.A.C. Case No. 27 of 2011 (497/2011).

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 22nd May, 2011 at about 22.00 hours in front of AD 69/68, Sector-I, Salt Lake, under jurisdiction of Bidhannagar (North) police station with the involvement of the offending vehicle being motor cycle bearing registration No. WB-26Q 1093 (motor cycle) which approached at an exceeding speed, rashly and negligently collided with the victim who was stationed in front of the aforesaid building. The victim sustained severe injuries and was admitted at Apollo Gleneagles Hospital on 22nd May, 2011 and expired on the same day.
4. The Learned Advocate for the appellant/insurance company submitted that the Learned Tribunal erroneously assessed the annual income of the victim and computed the annual income statement denoted in the income tax return of two years prior to the death of the victim and one year after death of the victim. The Learned Advocate representing the appellant/insurance company further submitted that in view of the decisions of the Hon'ble Apex Court the last income tax returned submitted by the victim prior to his death should be considered. More-over, the driver of the offending vehicle did not possess a valid driving licence in view of the deposition of P.W. 1 the driving licence which marked as Ext. A. He further pointed out that the seizure list only mentioned of a

learner's licence being issued in favour of the driver of the offending vehicle and therefore, he sought for the right to pay and recover the compensation amount from the owner of the offending vehicle.

5. The Learned Advocate for the respondent Nos. 1 to 3/claimants submitted to have filed a cross objection being COT 20 of 2022 wherein he had agitated that the Learned Tribunal erroneously considered the multiplier of 5 instead of 7 with regard to the age of the victim to be 64 years at the time of his death. More-over, the medical expenditure to the tune of Rs. 12,24,617/- which had been marked as Ext. 19 had not been considered by the Learned Tribunal while granting the compensation in favour of the claimants.

6. Since, the occurrence of the accident, the involvement of the offending vehicle, the route permit, the insurance policy, etc. have not been disputed by the Learned Advocate representing the appellant/insurance company, this Court restrict itself only to the grievance agitated by the respective parties. The accident occurred on 22nd May, 2011 and, therefore, the last income tax return for the year 2010-11 should be considered for assessing the annual income of the victim the document marked as Ext. 16 revealed the annual income of the victim of Rs. 3,47,819/-. The document marked as Ext. A issued by the L.A. Beltola Road Kolkata-20 denoted the class of vehicle held to be motor cycle with gear with effect from 09.12.2012. The charge-sheet being No. 135 dated 31.08.2011 in

para 6 mentioned seizure of Learner Driving Licence No.PVD No.A/640708 in the name of Gopal Nath issued on 31.01.2011 which was marked as Ext. 1. The contradiction in the documents as aforesaid with regard to the driving licence cannot be sacrosanct in the sense of aforesaid licence to have not been possessed by the driver of the offending vehicle on the relevant date of accident. The appellant/insurance company is, therefore, not entitled to recover the paid amount of compensation to the claimants from the owner of the offending vehicle. The Learned Tribunal should not have disregarded and discarded the medical expenditure incurred for the treatment of the victim as per the hospitalisation records and bills marked as Ext. 19. More-over, the multiplier should have been considered to be 7 instead of 5 with regard to the age of the victim.

Considering the observations of the Hon'ble Apex Court Pranay 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. 13,22,000/- is modified as follows:

Annual Income Less 1/3rd Personal Expenses Multiplier to be "7"	Rs. 3,47,819/- Rs. 1,15,939/- Rs. 2,31,880/- X 7 ------------------ Rs. 16,23,160/-

1 2017(4)TAC 673(S.C)

2 (2009) 6 SC 121

Medical Expenses General Damages	Rs.16,23,160/- Rs.12,24,617/- Rs. 28,47,777/- Rs. 70,000/- Rs. 29,17,777/-

7. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.13,22,000/-(Rs. 25,000 + Rs. 12,97,000) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The appellant/insurance company shall be deposited further sum of Rs. 15,95,777/- before the office of the Registrar General, High Court at Calcutta within six weeks from the date of passing of this order.

8. The respondent Nos. 1 to 3/claimants are entitled to receive the balance amount of Rs. Rs. 29,17,777/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

   The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent No.1 to 3/claimants with accrued interest as mentioned in the award passed by learned Judge, Motor Accident Claims Tribunal cum Fast Track Court-3, Barasat, North 24-Parganas in M.A.C. Case No. 27 of 2011 (497/2011) on proof of proper identification of the respondent Nos.1 to 3 /claimants subject to payment of ad valorem Courts fees.

9. The instant appeal and cross objection are disposed of accordingly.

10. The interim order if any stand vacated.

11. The TCR be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)