

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**IA No.:CAN/1/2024
in
FMA 356 of 2024**

**The Oriental Insurance Company Limited
Versus
Ashim Paul & Anr.**

For the Appellant : Mrs. Sucharita Paul.

For the Respondents : Mr. Jayanta Kumar Mondal,
Mr. Sayantan Rakshit.

Heard & Judgment on : 20th March, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 05.12.2023 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 14th Court, Alipore, District – South 24-Parganas in M.A.C. Case No. 13 of 2011.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the victim who suffered injuries owing to an accident which occurred on 15.10.2010 at about 3.30 hours on Beliaghata Main Road in front of I.D. and B.G. Hospital Main Gate with the involvement of the offending vehicle being a 'Taxi' bearing registration no. WB-04A/0499 which hit an auto rickshaw bearing registration no. WB-04E/7926 in which the victim had been a passenger at an exceeding speed, rashly and negligently, from the opposite direction. Consequently, the victim suffered severe injuries and was shifted to N.R.S. Medical College and Hospital wherefrom he was admitted at East Calcutta Clinic Nursing Home on 16.10.2010 and was discharged on 24.10.2010.
4. The Learned Advocate representing the appellant/Insurance Company submitted that the learned Tribunal in absence of any corroborated oral and documentary evidence with regard to the avocation and income of the victim assessed the monthly income of the victim to be Rs.6,000/-. Moreover, the victim did not suffer any loss of income. The extent of disability assessed by the private Doctor to be 40% was an excessive and sought for reduction in the amount of compensation as awarded by the learned Tribunal. The learned Advocate representing the appellant/Insurance Company further submitted that the driving licence of the driver of the offending vehicle was neither seized

nor produced before the learned Tribunal and, therefore, the appellant/Insurance Company was not liable to pay the compensation as awarded.

5. The learned Advocate representing the respondents/claimants submitted that the learned Tribunal taking into account of each and every aspect had justifiably disposed of the M.A.C. Case No. 13/2011 considering the compensation to the extent of Rs.9,31,935/- along with interest at the rate of 6% per annum.
6. Perused the documents of records including the medical documents of the Eastern Calcutta Clinic Nursing Home which are marked as Exhibits 1, 5 and 9. The nature of injury suffered by the victim as revealed from the aforesaid documents is in sink with the information of P.W.2 who assessed the extent of injury of visibility to be 40% and this Court is not inclined to interfere with the same. The learned Tribunal has taken into consideration the element of suffering the medical expenses, transportation cost, amount towards extra nourishment. The appellant/Insurance Company also could not cite any contra evidence before the learned Tribunal that the respondent/claimant was not any kind of employment post the accident. Therefore, the amount granted towards loss of income is also not interfered with. However, in the absence of corroborative oral and documentary evidence the notional income

of Rs.4,500/- per month to be the notional income considering the fiscal index at the relevant point of time will not be improbable.

7. Considering the rival contentions of the learned Advocate representing both the parties and Since the occurrence of the accident, involvement of the offending vehicle, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of the issues raised by the learned Advocate representing the appellant/Insurance Company.
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. 9,31,965/- is modified as follows:-

Monthly Income	Rs. 4,500/-
	Rs. 1,800/-
40% Future Prospect	Rs. 6,300/-
	X. 12
Annual Income	Rs. 75,600/-
	X 17
Multiplier '17'	-----
	Rs. 12,85,200/-
40% Disability/earning capacity	X 40%
	Rs. 5,14,080/-
Less : Earning during treatment period	Rs. 9,000/- (for 2 months)

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

² (2009) 6 SC 121

Add : Medical expenses	Rs.5,23,080/-
Add : Transportation cost	Rs. 99,725/-
Add : Pain and sufferings	Rs. 15,000/-
Add : For nourishment	Rs.1,00,000/-
	Rs. 15,000/-
	Rs. 7,52,805/-

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.16,57,519/- as per challan filed by the learned advocate representing the appellant/insurance company.

10. The Respondents/claimants are entitled to receive the amount of Rs. 7,52,805/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

11. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the respondent no. 1/claimant as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal, 14th Court, Alipore, South 24-Parganas in M.A.C. Case No. 13 of 2011 on proof of proper identification of the respondent no. 1/claimant subject to payment of ad valorem Court fees and refund the balance amount through a cheque to the Learned

Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

12. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company for the accounts of the insurance company.
13. In case the appellant/Insurance Company succeeds to prove after adducing proper evidence that the driver of the offending vehicle did not possess a valid driving licence then the appellant/Insurance Company will be at liberty to recover the amount of compensation paid to the respondent no. 1/claimant from the owner of the offending vehicle.
14. The instant appeal is disposed of accordingly.
15. The pending applications, if any, stands disposed of.
16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)