

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1481 of 2024

**National Insurance Company Limited
Versus
Mishra Vala Dalai & Ors.**

With

**COT/25/2025
CAN 1 of 2025**

**Mishra Vala Dalai & Anr.
-Vs.-
National Insurance Company Limited & Anr.**

For the Appellant : Mr. Sanjay Paul
Ms. Jaita Ghosh

For the Respondent No.1 & 2 : Mr. Amit Ranjan Roy.

Heard & Judgment on : 2nd April, 2025.

Ananya Bandyopadhyay, J:

In Re: CAN 1 of 2025

1. The Learned Advocates representing the appellants/claimants as well as respondent No.1/insurance company are present.

2. The application being CAN 1 of 2025 under Section 5 of the limitation Act has been taken up for hearing. From the record it reveals that there is a delay of 24 days.
3. Considering the averments made in paragraph 9 and 10 of the application being 1 of 2025 and in view of the beneficial legislative intent the delay of 24 days in filing the instant case is condoned.
4. The application being CAN 1 of 2025 is allowed.
5. The instant appeal had been filed against the judgment and award dated 27th June, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District & Sessions Judge, 4th Court, Paschim Medinipur in M.A.C. Case No. 226 of 2020.
6. 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 3rd November, 2019 at about 8.00 p.m. with the involvement of the offending vehicle being a truck bearing registration No. WB-11C/5709 which at an exceeding speed rashly and negligently which hit the victim who was on his way towards Fako to Gopiballavpur pitch road riding by his own motor cycle on the left side of the pitch road. The victim having suffered severe injuries was transferred to Tapsia Gramin Hospital where he expired on the same day.

7. The learned Advocate representing the appellant/Insurance Company submitted that the learned Tribunal had granted a sum of Rs. 8000/- as monthly income in absence of corroborative oral or documentary evidence. The Learned advocate representing the appellant/insurance further submitted that general damages was granted to the extent of Rs. 70,000/- instead of Rs. 33,000/-.
8. The Learned Advocate representing the respondent No.1 and 2/claimants had filed a cross objection being COT 25 of 2025 agitated the point the learned Tribunal had erroneously granted future prospect to the extent of 25% instead of 40%.
9. 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 Advocate representing the appellant/insurance company. In absence of any corroborative oral and documentary evidence the monthly income of the victim to be Rs. 7500/- per month a helper of a truck will not be improbable. The Learned Tribunal granted 25% to be the future prospect in disregarding the age of the victim which should have been 40%.

10. 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. 12,57,000/- is modified as follows:

Monthly Income	Rs. 7500/-
Annual Income(7500 x 12)	Rs. 90,000/-
Future Prospect to be added(40%)	Rs. 36,000/-
	Rs. 1,26,000/-
	Rs. 63,000/-
Deduction towards personal expenses (50%)	Rs. 63,000/-
Multiplier to be "18"	x 18
General Damages	Rs. 11,34,000/-
	Rs. 33,000/-
Entitlement	Rs. 11,67,000/-

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 16,22,539/=(Rs. 25,000 + 15,97,539) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
12. The Respondent Nos. 1 and 2/claimants are entitled to receive the amount of Rs. 11,67,000/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 19.03.2020 till the date of actual realization.

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

² (2009) 6 SC 121

13. 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 Nos. 1 and 2/claimants as mentioned by Learned Judge, Motor Accident Claims Tribunal cum Additional District & Sessions Judge, 4th Court, Paschim Medinipur in M.A.C. Case No. 226 of 2020 on proof of proper identification of the respondent No.1 and 2/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.
14. 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 been further 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 through a cheque to be deposited at the office of the appellant/insurance company.
15. The instant appeal and cross objection are disposed of accordingly.
16. The interim order if any stand vacated.

17. The TCR be sent down to the concerned tribunal forthwith.
18. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

C.M. A.R.