

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 196 of 2023

CAN 2 of 2024

**The New India Assurance Company Limited
Versus
Vishwanath Dhara & Anr.**

With

COT/85/2024

**Vishwanath Dhara
-Vs.-
The New India Assurance Company Limited & Anr.**

For the Appellant : Mr. Parimal Kumar Pahari

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

Heard on : 06.08.2024

Judgment on : 6th May, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 /claimant are present.

2. The claimant being the victim of the accident filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge, Fast Track 1st Court and Tribunal Judge, Tamluk, District Purba Medinipur being MAC Case No. 114/2019, claiming an award of Rs. 15,00,000/- as well as interest and the cost of litigation whereby the aforesaid deceased was injured due to a road traffic accident on 02.02.2019 at about 9.50 p.m. The offending vehicle being a truck bearing Registration No. WB-57C/9836 hit the aforesaid victim in a rash and negligent manner while he had stopped at Dokangora Bus Stoop. Consequently, the victim sustained grievous injuries was admitted in the Haldia S.D. Hospital and was later transferred to Desun Hospital and Heard Institute Kolkata, where he was admitted there from 03.02.2019 to 15.02.2019 and still continued treatment there. Subsequently, based on a complaint, Bhabanipur P.S. Case No. 39/2019 dated 05.02.2019 was instituted against the driver of the offending vehicle as aforesaid.
3. The owner of the offending vehicle appeared in this case but did not contest this case subsequently. However, he submitted a written statement and claimed that on the day of the alleged accident the vehicle was duly covered by an Insurance Policy issued by the O.P. no. 2 and thus he wanted the O.P. No. 2 to

indemnify his liability and for the compensation if any that may be awarded by this Tribunal. However, all the averments of the claim application have been denied and it was claimed that neither the said Lorry negligent driving of the said vehicle by its driver. The Policy Document Number was mentioned with date.

4. The respondent, New India Assurance contested the aforesaid MAC case.
5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 22,52,000/- as well as an interest of 6% from the date of filing the case, that is from 01.04.2019 payable by the Insurance Company as the indemnifier at the first instant.
6. The Learned Advocate representing the appellant/insurance company submitted that the learned Tribunal erroneously considered the monthly income of the victim to be Rs.10,000/- in absence of oral and documentary evidence. More-over, the extent of disability suffered by the victim to be 80% as assessed by the Medical Board was exclusive. The learned Advocate representing the appellant/insurance company further submitted that the victim failed to prove his avocation as "Mosaic Mistri".
7. The Learned Advocate representing the respondent No.1/claimant to have filed a cross objection being COT 85 of 2024 claiming enhanced compensation towards non pecuniary damages, future

prospect, future treatment, cost of attendant from the date of accident till he remained alive, expenditure conveyance on died, pain and suffering and medical agony.

8. Considered the rival contentions of the learned Advocates representing both the parties.
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 appellant/insurance company, this Court restricts itself only to the extent of issues agitated by the learned Advocates representing the respective parties.
10. The accident occurred on 2nd February, 2019. Considering the fiscal index on the relevant point of time the sum of Rs. 10,000/- to have been considered as a monthly income of the victim is reasonable. The victim had suffered injuries resulting loss of vision with deformity of his wrist and skull both being permanent in nature. The certificate issued by the Medical Board marked as Ext. 12 and opinion of P.W.3 conformed as the victim would not be able to perform any risky job owing to the condition of his eye during his cross examination. The P.W.3 deposed the left eye on the victim to have been permanently damaged and the possibility of recovery was nil in case of such permanent damage resulting in his permanent disability. In the above premises, in National

insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 22,52,000/- is modified as follows:

Monthly Income(Rs. 10,000)	Rs. 10,000/-
Annual Income(Rs. 10,000 x 12)	Rs. 1,20,000/-
Disability 80%	Rs. 96,000/-
	Rs. 24,000/-
Future Prospect to be added(25%)	Rs. 1,20,000/-
Multiplier to be "13"	x 13
	Rs. 15,60,000/-
Pain and suffering	Rs. 3,00,000/-
Compensation for disfigurement	Rs. 2,00,000/-
Medical Expenses	Rs. 6,52,000/-
Future Medical Expenses	Rs. 1,00,000/-
Entitlement	Rs. 28,12,000/-

11. The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 28,12,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
12. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 27,45,095/=(Rs. 25,000 + 27,20,095) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The Learned Advocate representing the appellant/Insurance Company is to deposit the

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

² (2009) 6 SC 121

remaining balance amount before the along with interest as aforesaid before the office of the learned Registrar General, High Court at Calcutta within six weeks.

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 with accrued interest to the present respondent Nos. 1 /claimant as mentioned by Motor Accident Claims Tribunal, Additional District Judge, Fast Track 1st Court and Tribunal Judge, Tamluk, District Purba Medinipur being MAC Case No. 114/2019 on proof of proper identification of the respondent No. 1/claimants subject to payment of ad valorem Court fees within four weeks 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 instant appeal and cross objection are disposed of accordingly.
15. The interim order if any stand vacated.
16. The TCR be sent down to the concerned tribunal forthwith.
17. 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.