

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 1904 of 2018

Sujata Shaw & Ors.

-Vs-

ICICI Lombard General Insurance Co. & Anr.

For the Appellants : Mr. Krishanu Banik

For the Respondents/
Insurance Company : Mr. Sayak Majumder

Heard & Judgment on : 4th April, 2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved.
However, the matter was listed under the heading 'For Hearing' for further clarification.
2. The Learned Advocates representing the respective parties are present.
3. The instant appeal had been filed against the judgment and award dated 20.05.2017 passed by the learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 24 of 2014 and 266 of 2013.
4. Five claimants in respect of deceased Banamali Shaw filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, ADSJ/Tribunal Judge, 2nd Court Tamluk being MAC Case No. 24 of 2014/No. 266 of 2013 claiming an award of Rs. 18,00,000/- along with

an interest applicable from the date of filing the petition for the loss of life, for loss of future prospects for loss of estate, for funeral expenses and for consortium with added litigation costs due to the death of the victim in a road traffic accident on 01/05/2013 at about 10:30 pm. The offending vehicle bearing Registration No. WB-22U/2532 in a rash and negligent manner hit the aforesaid deceased while he was riding on his bicycle. Consequently, the victim sustained multiple grievous injuries and expired on the spot. His postmortem was held at Purba-Mednipur District Hospital at Tamluk.

5. Subsequently, based on a complaint, P.S. Case No. 109/13 dated 02/05/2013 under Sections 279/304-A/427 of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.
6. Though the owner of the offending vehicle appeared at the initial stage but did not subsequently contest the aforesaid MAC Case No. 24 of 2014/No. 266 of 2013. The case proceeded ex-parte against him.
7. The respondent, Bharati Axa General Insurance Company Ltd. contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences directed the insurance company to pay Rs 5,17,000/-. Rs.2,17,000/- was to be paid to claimant No.1, Rs.1,00,000/- each to both the minors and also Rs.50,000/- to each of the parents of the deceased being claimant Nos. 4 and 5 within one month from the date of order failing which the amount

would carry an interest at the rate of 8% per annum till realization of the same.

9. The Learned Advocate representing the Appellant submitted as follows:-

- a. It was erroneous to assess the monthly income of the victim-deceased at Rs. 3,000/- instead of Rs. 14,000/- per month. The victim was in the business of readymade garments and sarees and worked at a shop called Petri Matri Dresses at Narghat Bazar North. The claimants had successfully proved and established the income of the victim through oral evidence and by adducing several documents before the tribunal.
- b. Future prospects should have been considered by the learned judge of the tribunal while calculating compensation under the Motor Vehicles Act.
- c. The learned judge of the tribunal failed to assess adequate compensation under the heads of loss of estate, loss of consortium, funeral expenses and also the deprivation of fatherly affection towards the claimants (son and daughter of the deceased respectfully).
- d. It was erroneous to reduce 1/4th amount on account of own personal living expenses.
- e. Interests should have been awarded at 9 percent per annum.

10. The learned Advocate representing the respondents/Insurance Company submitted after meticulous assessment of the oral as well as documentary

evidence the learned Tribunal had pronounced the award not to be interfered with.

11. Heard the submission of the learned advocates representing the respective parties.

12. Since the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the respondents/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues. The age of the victim at the time of his death was 36. Therefore the multiplier should be applied as 15 instead of 16. The learned Tribunal had elaborately discussed the failure on the part of the claimants to prove the monthly income of the victim against his avocation. In the absence of any corroborative oral and documentary evidence the monthly income of the victim can be considered to be Rs.4,000/-per month in view of the fiscal index prevalent in the year 2013 than the accident occurred. In view of the number of claimants to be five a deduction of $\frac{1}{4}^{\text{th}}$ of the income including the future prospect should be deducted towards personal expenditure. Moreover, the element of future prospect should have been assessed to the extent of 40%.

13. Considering the observations of the Hon'ble Apex Court in National Insurance Company Limited –Vs.- Pranay Shetty & Anr. and Sarala Verma & Ors. –Vs.- Delhi Transport Corporation & Anr., the impugned award of Rs. 5,17,000/- is modified as follows:-

Monthly Income	Rs.4,000 /-
Annual Income	Rs. 48,000/-
Future Prospects (40%)	Rs.19,200/-
	Rs.67,200/-
1/4 th Deduction (67,200-16,800)	Rs.50,400/-
Multiplier '15"	X 15
	Rs.7,56,000/-
General Damages	Rs.84,000/-/-
	Rs. 8,40,000/-
Less awarded amount	Rs.5,17,000/-
	Rs. 3,23,000/-

14.The Learned Advocate for the appellants/claimants submitted that the appellants/claimants has withdrawn a sum of Rs. 5,17,000/-. The appellants/claimants are entitled to a further sum of Rs. 3,23,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.

15.The Learned Advocate for the respondents/insurance companies is to deposit the balance sum of Rs. 3,23,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within ten weeks from the date of passing of this order.

16. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the appellants/claimants as mentioned in the award passed by the learned Additional District Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 24/266 of 2014/2013 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.

17. The instant appeal is disposed of accordingly.

18. The Trial Court Records shall be sent down to the concerned tribunal forthwith.

19. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct.)