

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 889 of 2023

Chandra Pradhan & Ors.

Vs.

National Insurance Company Ltd. & Anr.

For the Appellants/Claimants : Mr. Uday Sankar Chattopadhyay
Ms. Bidisha Chakraborty

For the Respondent No.1/
Insurance Company : Ms. Gopa Das Mukherjee

Heard and Judgment on : 15/05/2025

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 both the parties are present.
3. The claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri being MAC Case No. 74/2016, claiming an award of Rs. 12,00,000/- whereby the victim expired due to a road traffic accident on 11/02/2015 at about 6 pm. The offending vehicle bearing Registration No. WB-72-C-8396 hit the aforesaid deceased in a rash and negligent manner while he was travelling by motorcycle. He was taken to NBMC & Hospital where he

succumbed to his injuries. A written complaint was filed which initiated Banarhat PS Case No. 57/15 dated 27/02/2015 against the offending vehicle.

4. The owner of the offending vehicle filed his written statement where he agitated that there has been no occasion for the petitioners to advance the instant claim and the plaint petition, is bad for defects of parties as well as barred by the principles of limitation, waiver, estoppel and acquiescence. According to the owners the instant petition has been filed for illegal gains and should be rejected being devoid of merit and material facts. They claimed the accident occurred due to the fault of the other vehicle as well as due to contributory negligence of the deceased and submitted further that since the vehicle concerned had properly been insured and as such, the entire liability for compensation has been on the insurance company. It has been further been stated that the police documents did not prove for his liability as far as the prayer for compensation, claimed in the instant case.
5. National Insurance Company Ltd. contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded Rs 4,22,500/- with a penal interest payable at 12% if the amount was not paid within 30 days of the receipt of the order.
7. The Learned Advocate representing the Appellants/claimants submitted that the Learned Tribunal failed to consider the deceased was a Samprasarak In-Charge at Birsan Kujur MSK, Naya Sylee TG and he earned Rs.8100/- per month and the income of the deceased was duly proved by the PW-3 but on the other hand the compensation was awarded

considering Rs. 3,000/- per month although the scroll sheet duly signed by the Block Development officer had been placed as evidence. The deceased namely Kunal Pradhan worked as a Samprasarak In-Charge at Birsen Kujur Madhyamik Sikha Kendra, Naya Sylee TG and the said post is permanent in nature and after the retirement at the age of sixty years, a Samprasarak received a consolidated amount from the Government of West Bengal. The Learned Tribunal wrongly deducted 1/3rd from the total income of the deceased instead of 1/4th from the total income of the deceased. The element of future prospect was not considered.

8. The Learned Advocate representing the Respondent No.1/Insurance Company submitted that the victim expired at the age of 48 years and received an honorarium instead of monthly salary. Moreover, there was no proof that the victim worked as a Samprasarak-in-charge, as claimed, therefore, the Learned Tribunal was justified in assessing the compensation. The accident occurred in the year 2015 whereby the notional income of the victim can be computed as Rs.5,000/-.
9. Heard the submission of the learned advocates representing the respective parties.
10. 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 Advocates representing the both the parties. The victim worked as a Samprasarak-in-charge of Birsen kujur MSK, Naya Sylee T.G., P.S. Nagrakata, Dt. Jalpaiguri and received honorarium to the

extent of Rs.8,100/- in February, 2015. However, the claim of the PW 3 was not supported by any document.

11. The Learned Tribunal in the impugned judgment observed as follows: -

“Besides the oral evidence of PW1 and the eye witness, the petitioners filed Exbt.1,2 & 3 which proved the fact of involvement of the offending vehicle in the accident resulting which the victim dies. Exbt.4 being the P.M report proved the fact that at the relevant time, the victim was 48 years old at the time of accident. PW1 during her evidence produced the photocopy of the Electoral Identity Card the deceased, Kunal Pradhan, as issued by the Election Commission of India, which transpires that on 01.01.2003, said Kunal Pradha, S/o Bambahadur Pradhan was 35 years old. Therefore, it appears that the time of accident, the age of the deceased was between 45-50 years, suiting the 2nd Schedule of the M.V. Act.

Photocopy of the Insurance Policy of the offending vehicle goes to establish that the offending vehicle having Engine No.13131, Chassis No.12895 and registration no. Being WB-72C/8396 was under Insurance coverage under O.P/Insurance Co. at the time of said accident. It is needless to mention here that the O.P/Insurance Co. Has also failed to disprove, or discord such fact. The insurance policy also proved the fact that at the relevant time, the offending vehicle bearing no. WB-72C/8396 was insured with the O.P, the National Insurance Co. Ltd. from 18.11.2014 to 17.11.2015 and the accident taking place on 11.02.15 was well within the period of insurance and thus the O.P. No.2 being insurer of the offending vehicle is to pay the compensation to the petitioners as would be decided by this Court. The victim was the husband of the petitioner No.1 and was in the age group of 45-50 years and thus the multiplier issued here as 12 as mentioned in the 2nd Schedule u/s.163A of the M.V. Act.

The deceased was stated to be a Samprasarak-in-charge at Birsan Kujur MSK Naya Sylee T.G., P.S. Nagrakata, Dt. Jalpaiguri having a monthly income of Rs.8,100/- and income proof is filed on record. It appears from the scroll sheet for the month of February 2015 duly signed by the BDO, Nagrakata Development Block that the deceased Kunal Pradhan was given honorarium of Rs.8,100/- but admittedly the deceased died on 11.02.2015, so the deceased could not have chance to receive such

honorarium. There has been no document to describe the status of the post Samprasarak-in-charge at Birsan Kujur MSK, Naya Sylee T.G, P.S Nagrakata, Dt. Jalpaiguri, nor it is available as to whether such honorarium has been provided to the incumbent every month. It is also not available as whether the post of Samprasarak-in-charge at Birsan Kujur MSK, Sylee T.G, P.S. Nagrakata, Dt. Jalpaiguri has been a permanent post or not. The petitioners also failed to produce document showing income of the deceased for the entire month just preceding to his death. Though the Tribunal is nor disbelieving the scroll sheet signed by the BDO, Nagrakata Block but in the absence of cogent document showing the income of the deceased in the light of above observation, this tribunal is unable to concede the argument of the petitioner and not inclined to accept the income of the deceased as claimed by the petitioner. There has been no other document available to prove the monthly income of the deceased. So this tribunal fixes notional income of Rs.3,000/-p.m. as the income of the deceased and thus the annual being Rs.36,000/- and the multiplier being 13 and while calculating the compensation, this court finds $1/3^{\text{rd}}$ of Rs.36,000/- in consideration of the expenses which one would have incurred towards maintaining himself had he been alive. Thus the total Compensation comes to $\text{Rs.}36,000/- / 3^{\text{rd}} = \text{Rs.}24,000 \times 13 = \text{Rs.}3,12,000/-$ and the petitioners are further entitled to get funeral expenses as Rs.2,000/-, loss of estate as Rs.2,500/- and, loss of love and affection to the extent of Rs.5,500/- and considering the age, family burden, income and future responsibility of the deceased, the petitioners are further entitled to get an amount of Rs.1,00,000/- on account of loss of future prospect and thus the total compensation comes to be Rs.4,22,500/- and the O.P. No.2 being the insurer of the offending vehicle is to pay the above compensation to the petitioners”.

12. This Court accedes the observation of the Learned Tribunal as stated above.

13. **Considering the observations of the Hon’ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala**

¹ 1 2017(4)TAC 673(S.C)

Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 17,79,493/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	<u>x 12</u>
1/4 th Personal Expenses	Rs. 60,000/-
	<u>Rs. 15,000/-</u>
Future Prospect to be added(40%)	Rs. 45,000/-
Multiplier to be “13”	<u>X 13</u>
	Rs. 5,85,0000/-
General Damages	<u>Rs. 84,000/-</u>
	Rs. 6,69,000/-
Less award	Rs. 4,22,500
	<u>Rs. 2,46,500/-</u>
Entitlement	

14. The appellants/claimants have withdrawn a sum of Rs. 4,22,500/- from the learned Tribunal. The appellants/claimants are entitled to a sum of Rs.2,46,500/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.
15. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,46,500/- along with interest at the rate of 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 six weeks from the date of passing of this order.

² (2009) 6 SC 121

16. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award passed by learned Judge, MAC. Tribunal 2nd Court, Jalpaiguri in M.A.C. Case No. 74 of 2016 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees within six weeks.
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.)

S.R. (A.R.C.)