

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 958 of 2024

Tapati Patra & Ors.

-Vs.-

Anand Kumar Saraff & Anr.

For the Appellants : Mr. Sanat Kumar Mallick

For the Respondents : Mr. Soumalya Ganguli

Heard on : 19.07.2024, 07.10.2024, 14.01.2025
21.03.2025

Judgment on : 08.05.2025

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 the respective parties are present.
3. The claimants, namely Smt. Tapati Patra, Tanuja Dutta, and Mithu Dutta, filed an application under Section 166 of the M.V. Act in the Court of the Motor Accident Claims Tribunal, 3rd Court of City Civil Court at Calcutta, being MACC Case No. 294 of 2015, claiming compensation of Rs. 4,25,000/- along with interest for the accidental death of their father, Sarat Chandra Rudra. On 05/07/2015 at about 4:15 p.m., while the deceased was riding his bicycle through V.I.P. Road towards Kestopur, he was dashed near Dum Dum Park by a motorcycle bearing Registration No. WB-01AC/7658, which was being driven at a high speed rashly and negligently towards Kolkata. As

a result of the collision, the victim fell and sustained grievous injuries, and was immediately removed to R.G. Kar Hospital, where he succumbed to his injuries the same night at about 9:35 p.m. Lake Town P.S. Case No. 160 of 2015 dated 05/07/2015 under Sections 279/304A/427 of the Indian Penal Code was registered against the driver of the offending vehicle.

4. The owner of the offending vehicle did not contest the case and the case proceeded ex parte against him.
5. Iffico Tokio General Insurance Co. 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 awarded Rs 50,000/- with an interest payable at 8% per annum.
7. The Learned Advocate representing the appellants submitted that:-
 - a. The victim being a pension holder died in a Motor Vehicular Accident by the offending Motor Cycle. Wife of said deceased was pre-deceased and the appellants/ claimants were the three married daughters of the said deceased and they claimed for compensation to the tune of Rs.4,25,000/ when the pension amount of the deceased was Rs. 10,538/- per month. However, at the time pronouncing the judgment and award, the Learned Tribunal wrongly held that the married daughters were not dependents upon the father, and awarded a lump sum of Rs.50,000/- each for three claimants which required modification.

8. The Learned Advocate representing the respondent/insurance company contested and objected to the claim of the married daughters to the compensated.
9. Heard the submission of the learned advocates representing the respective parties.
10. Under Section 166 of the Motor Vehicles Act, 1988, a legal representative of the deceased can file a compensation claim. A married daughter has the right to claim compensation under the Motor Vehicles Act, 1988, for the death of her father, irrespective of whether she was financially dependent on him.
11. The Supreme Court in the following decisions held the eligibility of married daughters to be entitled to compensation on the death of either of the parents viz. (a) *National Insurance Co. Ltd. Vs Birender & Ors. (2020) 11 SCC 356*, (b) *Manjuri Bera Vs Oriental Insurance Co. Ltd. (2007) 10 SCC 643*, (c) *New India Assurance Co. Ltd. Vs Somwati & Ors. (2020) 9 SCC 644*.
12. Accordingly, the appellants/claimants are entitled to the following compensation.
13. In view of the above observation of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr.***¹ and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***² the impugned award is modified as follows:-

Monthly Pension (Exbt-6 & 8 collectively)	Rs.10,538/-
Annual Pension (Rs.10,538x12)	Rs.1,26,456/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

After deduction 1/3 rd of the annual pension towards personal and living expenses (Rs.1,26,456 ÷ 3x2)	Rs.84,304/-
Age of the victim was 65 (Exbt 6, 7 & 5) Multiplier "7" (Rs.84,304x7)	Rs.5,90,128/-
Rs.50,208 x 3 = Rs.1,50,624/- which have been already received by the appellants in the Tribunal so payable amount is	5,90,128/- <u>-1,50,624/-</u> Rs. 4,39,504/-

14. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 1,50,624/- The appellants/claimants are entitled to a sum of Rs. 4,39,504/- along with interest at the rate of 6%per annum to be paid from the date of filing of the claim application i.e. 21.09.2015 till the date of realization.
15. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,39,504/- along with interest before the office of the learned Registrar General High Court at Calcutta within eight 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 present appellants/claimants in M.A.C. Case No. 294 of 2015 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees within four weeks.
17. The instant appeal is disposed of accordingly.
18. The pending applications, if any, stands disposed of.
19. The TCR be sent down to the concerned Tribunal forthwith.
20. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)