

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 466 of 2024

**Saraswati Gayen (Maity) & Ors.
Versus
The National Insurance Company Ltd. & Anr.**

For the Appellants : Mr. Amit Ranjan Roy.

For the Respondents : Mr. Sanjay Paul,
Ms. Jaita Ghosh.

Heard & Judgment on : 16th January, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal has been filed against the judgment and award dated 13th December, 2023 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court-1, Tamluk, Purba Medinipur in M.A.C. Case No. 228 of 2021.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the appellants/claimants owing to the death of the victim in an accident which occurred on 22nd February, 2021 at about 4.30 P.M. on Digha Mechada Road (NH-116B) within the jurisdiction of District - Purba Medinipur with the involvement of the offending motor vehicle

bearing no. WB16AK/8917 which approached at an exceeding speed and having lost control over the same hit the victim and ran over him resulting in severe injuries sustained by the victim who was subsequently declared to be dead at the District Hospital, Purba Medinipur at Tamluk.

4. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal erroneously did not consider the monthly income of the victim to be Rs. 15,000/- being motor van puller. The victim has been survived by six family members and the amount of compensation granted had been sparse and should have been enhanced considering the claimed amount of Rs. 15,000/- per month.
5. The Learned Advocate representing the respondent No.1/Insurance Company submitted that the appellants/claimants failed to cite any witness to justify that the victim was working as a motor van puller. Moreover, nobody comes to depose before the Learned Tribunal to have engaged the victim to drive a motor van against a payment of Rs. 15,000/- per month through any document and evidence. Therefore, the Tribunal was justified in granting a sum of Rs. 5,000/- per month while computing the compensation amount. Indeed, the appellants/claimants failed to produce either documentary or oral evidence to substantiate his claim of earning a sum of Rs. 15,000/- per month. However, in a rural background, it will not be possible at all times to evince the monthly income either through oral or through documentary evidence. Considering the accident to have occurred in the year 2021

and the relevant fiscal index prevailing on such date, it would not be improbable for the victim to have earned Rs. 7,500/- per month.

6. 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. 10,78,000/- is modified as follows:

Monthly Income	Rs. 7500/-
Annual Income	Rs. 90,000/-
Future Prospect to be added(40%)	Rs. 36,000/-
	Rs. 1,26,000/-
1/4 th Deduction	Rs. 31,000/-
Personal Expenses	-----
	Rs. 94,500/-
Multiplier to be "16"	X 16
	Rs. 15,12,000/-
General Damages	Rs. 77,000/-
	Rs. 15,89,000/-
Less Award	Rs. 10,78,000/-
Entitlement	Rs. 5,11,000/-

7. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 10,78,000/-. The appellants/claimants are entitled to a sum of Rs. 5,11,000/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 16.04.2021 till the date of its actual realization.
8. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,11,000/- interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .

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

² (2009) 6 SC 121

9. 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 equal proportion as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court-1, Tamluk, Purba Medinipur in M.A.C. Case No. 228 of 2021 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.
10. The instant appeal is disposed of accordingly.
11. The pending applications if any stands disposed of.
12. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.