

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 450 of 2022

National Insurance Co. Ltd.

-Vs-

Sourav Dey Chowdhury & Ors.

With

COT 30 of 2022

Sourav Dey Chowdhury & Anr.

-Vs-

National Insurance Co. Ltd. & Anr.

For the Appellant/
Insurance Company : Mr. Sanjay Paul
Ms. Jaita Ghosh

For the Respondents/
Claimant : Mr. Jayanta Mondal

Heard & Judgment on : 06.05.2025

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 instant appeal had been filed against the judgment and award dated 10.01.2022 passed by the learned Additional District Judge, Motor

Accident Claims Tribunal, Fast Track 1st Court, Paschim Medinipur in M.A.C. Case No. 367/2019.

4. Three claimants in respect of the deceased Jagdish Dey Chowdhury filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, District Judge, Paschim Mednipur being MAC Case No.367/2019, claiming an award of Rs. 11,00,000/- whereby the aforesaid deceased expired due to a road traffic accident on 03.11.2018 at about 6:30 pm. The offending vehicle, being a motor cycle bearing Registration No. WB-BA/2318 hit the aforesaid rashly and negligently while he was proceeding from Dharma towards Keranichoti. Consequently, the victim expired at Mednipur Medical College. Subsequently, based on a complaint, Kotwali P.S. Case No. 354/19 on 12.07.2019 under the Sections of 279/304(A) of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.
5. The owner of the offending vehicle appeared in this case but did not contest this case and was heard ex parte against him.
6. The respondent, the National Insurance Company contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.11,50,000/- as well as an interest of 6% from 28.08.2019.
8. The Learned Advocate representing the Appellants/insurance company submitted as follows:-

- a. The heirs of the victim failed to establish rash and negligent driving of the driver of the offending vehicle by producing reliable eye witness as the credibility of the alleged eye witness.
 - b. The claimant after nine months from date of accident on 03.11.2018 filed one application under Section 156(3) of the Cr.P.C. before the learned Magistrate on 14.06.2019 disclosing the number of the offending vehicle for the first time.
9. The learned Advocate representing the respondents/claimants submitted that the last income-tax return was not considered by the Tribunal a multiplier of 9 should have been applied and 10% should have been computed towards future prospect.
10. Considered the rival contentions made on behalf of the respective parties.
11. 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 appellant/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues. The cross-examination of P.W. 1 revealed that the claimants were unaware of the offending vehicle initially when the incident was informed to the police for the first time. P.W. 2 being the eye witness stated that the offending vehicle fled from the place soon after the accident and he was not interrogated by the Police in connection with the accident and appeared to depose for the first time before the learned Tribunal. Being an eye witness he did not lodge any complaint and convey any information

about the accident to any Police Station. The evidence of the eye witness appeared to be shoddy. However, the document marked as exhibit 5 being the charge-sheet revealed the involvement of the offending vehicle which prima facie established the involvement of the same in the accident upon investigation. The document marked as exhibit 2 reflecting the annual income of the victim should have been considered by the Tribunal while assessing the yearly income of the victim.

12. 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. 11,50,000/- is modified as follows:

Annual Gross Total Income [As per Income-tax return 2018-2019]	Rs. 3,06,620/-
Add : 10% Future Prospect	Rs. 30,662/-
	Rs.3,37,282/-
Less: 1/3rd	Rs.1,12,427/-
	Rs. 2,24,855/-
Multiplier '9'	X 9

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

General Damages	Rs. 20,23,695/- Rs. 36,000/-
Total Modified Amount	Rs.20,59,695/-

13. The appellant/Insurance Company deposited the awarded sum of Rs. 11,50,000/- before the office of the learned Registrar General High Court at Calcutta. The respondents/claimants are entitled to a further sum of Rs. 9,09,695/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.
14. The Learned Advocate for the appellant/insurance company is to deposit the balance sum of Rs. 9,09,695/- 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 eight weeks from the date of passing of this order.
15. 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, Fast Track 1st Court, Paschim Medinipur in M.A.C. Case No.

- 367/2019 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
16. The instant appeal is disposed of accordingly.
 17. The pending applications, if any, stands disposed of.
 18. 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.(Ct.)