

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 1125 of 2021
Smt. Bina Mondal @ Bina Mondal & Ors.
v.**

Cholamandalam M.S. General Insurance Company Ltd. & Anr.

For the Appellants : Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit

For the Respondents : Mr. Debanjan Mukherjee

Heard & Judgment on : 13.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant Appeal was heard earlier and the 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 19.11.2018 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 86 of 2016/M.A.C. Case No. 280 of 2016.

4. Six claimants of the deceased victim filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Mednipur being MAC Case No.86/2016, claiming an award of Rs. 11,00,000/- whereby the victim expired due to a road

traffic accident on 15/05/2016. The offending vehicle, bearing registration No. WB 33B/6441 hit the victim in a rash and negligent manner. The victim expired at the place of occurrence

5. On the basis of a written complaint, Debra PS Case No. 179/2016 dated 15/05/2016 was initiated.
6. The owner of the offending vehicle did not contest the case and the case proceeded ex parte against him.
7. Chola mandalam MS General Insurance. Co. Ltd. contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded Rs 5,85,0000/-, with interest payable at 6%.
9. The learned Advocate representing the appellants/claimants submitted that the learned Tribunal erred in not assessing the income of the deceased/victim of Rs.8,000/- per month as per salary certificate as proved by the P.W. 3 (employer) in view of the Apex Court's Judgment reported in 2020 SAR (Civ) 348 (Mohammed Siddique & Anr. -Vs.- National Insurance Company Ltd. & Ors.) and the learned Tribunal below erred in not adding the future prospects at 40% with the annual income in view of the Judgment (National Insurance Company Ltd. -Vs.- Pranay Sethi & Ors.) reported in (2017) 16 SCC 680) and I also submit that the learned Tribunal below erred in not adding the general damages as per present position law in view of the Judgment reported in 2022 SAR (Civ) 238 (Rasmita Biswal & Ors. -Vs. Divisional Manager, National Insurance

Company Ltd. & Anr.) and 2023 (3) TAC 740 (Cal) (New India Assurance Company Ltd. –Vs.- Sima Singh & Ors.) and as such the impugned award is liable to be modified by enhancing the same.

10. The learned Advocate representing the respondents/Insurance Company submitted that the entire issue in respect of the present case was regarding the monthly income of the deceased. It is stated herein that one Abdul Zahir has deposed as P.W, 3 who is the owner of Dui Bhai Store. He has stated that the victim used to work at his biscuit shop and he used to pay the victim Rs.8,000/- per month towards his salary and to that effect he has produced one income certificate which has been marked as exhibit 11 with objection. In his cross-examination he failed to show any document towards his proprietorship of such so-called Dui Bhai Store. Further he has admitted that as per request of the claimant party he had issued such income certificate. The appellant herein has referred to decision reported in (2020) 3 SCC 57 wherein the appellants has tried to submit that the income of the deceased should have been accessed in terms of the salary certificate so exhibited by the claimants/appellants herein. It is stated that the Hon'ble Supreme Court of India while deciding the said issue has also in paragraph 17 of the said decision had also stated that the said observation can be take into consideration when there is no allegation that the witness was set up for the purpose of the instant case. It is most humbly submitted that in the instant case he said Abdul Zahir who has deposed as P.W. 3 in his cross-examination has admitted that as per request of the claimants he had issued such income certificate. In

view thereof the income of the deceased cannot be taken as Rs.8,000/- as pleaded by the appellants herein further the observation made by the Hon'ble Supreme Court regarding the acceptance of salary certificate in the decision being reported in (2020) 3 SCC 57 has to be read with paragraph 17 thereof and the cross-examination of the P.W. 3.

11. Heard the rival contentions of the learned advocates representing the respective parties.

12. Since the dispute between the parties leading to the filing of the instant appeal is restricted to the quantum of salary this Court is of the opinion in the absence of proper document the notional income of Rs.5,000/- per month will be improbable in view of the fiscal index prevalent at the time of the accident.

13. 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. 5,85,000/- is modified as follows:

Annual Income	Rs.60,000 /-
Future Prospects (40%)	Rs. 24,000/-
	Rs.84,000/-
Less : 1/4th	Rs,21,000/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Multiplier '15"	Rs.63,000/- X 15 Rs.9,45,000/-
Add : General Damages Rs.70,000/- + 20%	Rs.84,000/- Rs.10,29,000/-
Less : Award impugned already paid	Rs.5,85,000/-
Enhanced awarded amount	Rs. 4,44,000/-

14. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants has withdrawn a sum of Rs. 5,85,000/-. The appellants/claimants are entitled to a further sum of Rs. 4,44,000/- 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. 4,44,000/- 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 six 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 Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Tamluk, Purba Medinipur in M.A.C.

Case No. 86 of 2016/M.A.C. Case No.280 of 2016 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 pending applications, if any, stands disposed of.

19.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.)