IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 720 of 2021

Haren Mahato
-Vs-
The National Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Krishanu Banik

For the Respondents : Mr. Rajesh Singh

Heard & Judgment on : 07.05.2025

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 respective parties are present.
3. The claimant being the victim filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Motor Accident Claims Tribunal, FTC, Balurghat, Dakshin, Dinajpur being MAC Case No.39/2015, claiming an award of Rs. 2,00,000/- whereby the victim was injured due to a road traffic accident on 07/10/14. The offending vehicle, an auto riksha bearing Registration No. WB61/4105 hit the aforesaid deceased rashly and negligently while he was travelling as a pillion rider on a motor cycle.

The victim had first been taken to Balurghat District Hospital have suffered grievous injuries.

4. The owner of the offending vehicle appeared and filed a written objection but thereafter did not contest the case and the case proceeded ex parte against him. The respondents, The National Insurance Co. ltd. contested the aforesaid MAC case.
5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs. 77,000/- as well as an interest of 6% from the date of filing the case till the realization of the amount.
6. The Learned Advocate representing the appellant/claimant submitted the learned Tribunal had erroneously considered the monthly income of the victim to be Rs. 3000/- per month working as a 'mason'. It was further submitted that the victim had become permanently disabled and not in a position to work as a 'mason'. Accordingly, the learned Tribunal had failed to assess the compensation on the basis of the multiplier system. It was not possible for the learned Tribunal to apply the multiplier method in determining the compensation to be awarded in absence of disability certificate being issued by a Medical Board of a Government Medical Hospital.
7. The Learned Advocate representing the respondent No.1/insurance company submitted that the offending vehicle was plying without route permit and, therefore, the respondent No.1/insurance company under no circumstances was liable to pay the compensation and if at all there was a

direction to pay the compensation liberty to be given to recover from the owner of the offending vehicle.

8. Considered the submission of the Learned Advocates representing both the parties.

9. Since the occurrence of the accident 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 points agitated by the Learned Advocate representing the appellant/claimant as well as respondent No.1 /Insurance Company. Evidently apart from the documents Marked as Ext.4, Ext.7, Ext.8, Ext.9a, Ext.9/b and 10, no document was produced to establish medical expenditure incurred towards victim's treatment being injured in the accident. The disability certificate was not produced before the Court to assess the extent of disability to determine as to whether the victim was in a position to peruse his livelihood. Under such circumstances, the observation of the learned Tribunal is modified to the extent of considering the monthly income of the victim to be Rs. 5000/- and the loss of earning to have incurred for two months in view of the observation of the learned Tribunal should be Rs. 10,000/-. A sum of Rs. 36,000/- is awarded as consolidated medical expenditure and physical shock and pain and suffering towards non pecuniary damages. The deposition of OPW1 negated the claim of the learned advocate representing the respondent No.1/insurance company who submitted that the route permit was issued on 06.11.2008 till 05.11.2013 which was subsequently renewed on

06.11.2013 being valid up to 05.11.2018 which was inclusively on the date of the accident on 07.10.2014.

10. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr[1] and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.[2] The impugned award of Rs. 77,000/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual income	x 12
	Rs. 60,000/-
Loss of earning	Rs. 10,000/-
Medical Expenses	Rs. 36000
	Rs. 106000/-
Entitlement	

11. The appellant/claimant is entitled to a sum of Rs. 1,06,000/- along with interest at the rate of 6%per annum to be paid from the date of filing of the claim application till the date of realization.

12. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 1,06,000/- along with interest as aforesaid before the office of the learned Registrar General High Court at Calcutta within eight weeks from the date of passing of this order.

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

2 (2009) 6 SC 121

13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter, disburse the same to the present appellant /claimant in the award passed by the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Motor Accident Claims Tribunal, FTC, Balurghat, Dakshin, Dinajpur being MAC Case No.39/2015 on proof of proper identification of the appellant /claimant subject to payment of ad valorem Court's fees within four weeks.

14. The instant appeal is disposed of accordingly.

15. The pending applications, if any, stands disposed of.

16. The TCR be sent down to the concerned Tribunal forthwith.

17. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)