

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 237 of 2025

**Debi Mandal & Ors.
Versus**

The Oriental Insurance Company Ltd. & Anr.

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

For the Respondent No.1/
Insurance co. : Ms. Sucharita Paul

Heard on & Judgment on : 29th April, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 9th January, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Re-Designated Court, Paschim Medinipur in M.A.C. Case No. 384 of 2014.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 4th June, 2014 at about 9.00

A.M. near Chithalboni more under the jurisdiction of Jhargram Police Station with the involvement of the offending vehicle being a tractor bearing Registration No. WB-33A/6670 which at an exceeding speed rashly and negligently hit the victim who was pedestrian on the concrete road on the left side from Manikpara to Khalsheuli for selling ice cream. The victim sustained severe injuries and succumbed to the same at Midnapur Medical College and Hospital on the same day.

4. Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal did not grant any compensation towards the element of future prospect and general damages. The multiplier applied was 17 instead of 16 with regard to the age of the victim to be 34 years at the time of the accident. In case of five dependents the learned Tribunal had deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses instead of $\frac{1}{4}^{\text{th}}$ at the relevant point of time. The victim used to earn of Rs. 5000/- per month which was not considered and sum of Rs. 3000/- was allowed towards monthly income of the victim to be notional income.
5. The learned Advocate representing the respondent No.1/Insurance Company submitted in absence of oral and documentary evidence to justify the claim of the monthly income

of the victim to be Rs. 5000/- per month the learned Tribunal had rightly considered the notional income to be Rs. 3000/- per month. The learned Tribunal had justifiably calculated the compensation amount which should not be interfered with.

6. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of issues agitated by the respective parties. Evidently, the learned Tribunal did not grant any compensation towards future prospect, general damages. The multiplier applied was to be 16 instead of 17 and the deduction should have been $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$ towards personal expenses. Considering the fiscal index at the relevant point of time it would not be improbable to consider the monthly income of the victim to be Rs. 4000/-.
7. 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. 10,15,000/- is modified as follows:

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

² (2009) 6 SC 121

Monthly Income	Rs. 4000/-
Future Prospect to be added(40%)	Rs. 1,600/-
	Rs. 5,600/-
Annual Income	Rs. 5,600/-
	X 12
Multiplier to be "16"	Rs. 67,200/-
	X 16
	Rs. 10,75,200/-
1/4 th Deduction towards personal expenses	Rs. 2,68,800/-
	Rs. 8,06,400/-
General Damages	Rs. 84,000/-
	Rs. 8,90,400/-
Less	Rs. 4,08,000/-
Entitlement	Rs. 4,82,400/-

8. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 4,08,000/- The appellants/claimants are entitled to a sum of Rs. 4,82,400/- along with interest at the rate of 6%per annum to be paid from the date of filing of the claim application i.e. 14.07.2014 till the date of realization.
9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,82,400/- along with 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.
10. 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 impugned judgment passed by the learned Judge, Motor Accident Claims Tribunal, Re-Designated Court, Paschim Medinipur in M.A.C. Case No. 384 of 2014 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.

11. The instant appeal is disposed of accordingly.
12. The pending applications, if any, stands disposed of.
13. The TCR be sent down to the concerned Tribunal forthwith.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. AR. Ct.