IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 1188 of 2024

Ganga Adhikari & Ors.

Vs.

The National Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Amit Ranjan Roy

For the Respondents : Mr. M. P. Chakraborty

Heard & Judgment on : 13.05.2025

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 09.11.2022 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Howrah in M.A.C. Case No. 197 of 2017.
4. Four claimants of the deceased 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, Fast Track Court, 1st Court, Howrah

being MAC Case No.197/2017, claiming an award of Rs. 35,00,000/- whereby the victim expired due to a road traffic accident on 28/05/2017. The offending vehicle, being a bus bearing Registration No. 11/0-2897 hit the aforesaid deceased in a rashly and negligently while he was standing on the road. Consequently, the victim expired as an effect of the accident.

5. Howrah PS Case No. 90/17 dated 29/06/2017 was initiated against the owner of the driver.
6. The owner of the offending vehicle did not contest the case and the case proceeded ex parte against him.
7. National Insurance Company Limited contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence dismissed and awarded Rs 4,44,400/- with an interest payable at 6%.
9. The learned Advocate representing the appellants/claimants submitted that the learned Tribunal did not consider the income-tax return for computing the annual income of the victim. The learned Advocate representing the respondents/Insurance Company submitted that the age of the victim was not proved, the status of the wife was not proved. Therefore, the claimant could not possibly claim the compensation awarded.
10. Considered the rival contentions of the learned advocates representing 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 respondents/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues.

12. The impugned judgment and order, inter alia, stated as follows:-

"*On 29.06.2017, one Surajit Adhikari, the near relative of the deceased victim, lodged a written complaint in Udaynarayanpur Police Station Case No. 90 of 2017 dated 29.06.2017 under Sections 279/427/304A of the Indian Penal Code. The investigation of the said case culminated in submission of charge-sheet against the driver of the said offending vehicle.*

At the time when the accident occurred, the petitioner was 48 years old and it is claimed that at that time his annual income was Rs.3,21,041/- approximately.

The opposite party no. 1 herein is the owner of the offending vehicle. In response to the summons served upon him, he did not appear to contest the case. The opposite party no. 2, i.e., the National Insurance Company Limited filed a written statement and contested the case on merit with the leave of this Tribunal granted under Section 170 of the Motor Vehicles Act. In the written statement, the opposite party no. 2 denied all the material allegations of the petitioners. The positive case of the opposite party no. 2 is that the driver of the offending vehicle was not holding a valid driving license at the time of the accident and that the owner of the offending vehicle did not comply the provisions of Section 134C of the Motor Vehicles Act. Further contending that the amount of compensation and *the interest thereon as claimed by the petitioners is excessive, the opposite party no. 2 has prayed for rejecting the application."*

13. It was further observed that "*charge-sheet has been submitted by the Investigating Officer of the criminal case initiated on the basis of the FIR lodged by Surajit Adhikari. The post mortem report (Exhibit 4) confirms the death of Banshi Adhikari and the autopsy surgeon opined that his death was due to the effects of the injuries which were ante mortem in nature. P.W. – 3, the employee of Income Tax Department, proved the Income Tax Returns for the year 2015-2016, 2016-2017 and 2017-2018 filed by the deceased.*

Now, considering the evidence adduced by P.W.-2 and P.W.3 as well as the exhibits – 1 to 9 in tandem, I am constrained to hold that Banshi Adhikari died in a road traffic accident which occurred due to rash and negligent driving of the offending bus by its driver.

The photocopy of the policy of insurance has been marked as exhibit – 5 which is in respect of the offending vehicle bearing registration no. WB-11D 2897. It shows that the offending bus stood insured with the National Insurance Company Limited till the midnight of 27.02.2018. Therefore, it is manifestly clear that on the relevant date the offending bus was under insurance coverage of the opposite party no. 2/National Insurance Company Limited.

14. Despite mentioning the income tax return and marking the same as exhibit 9 series there had been a lapse on the part of the Tribunal to

disregard the annual income of the victim as per the income tax return filed as aforesaid.

15. 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. 4,44,400/- is modified as follows:

Annual Income	Rs.3,07,240 /-
1/3rd Deduction	Rs. 1,02,413/-
	Rs.2,04,827/-
Future Prospects (25%)	Rs. 51,206/-
	Rs. 2,56,033/-
Multiplier '13"	X 13
	Rs.33,28,429/-
General Damages	Rs. 84,000/-
	Rs.34,12,429/-
Award Received	Rs.4,44,400/-
Balance	Rs.29,68,029/-

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

2 (2009) 6 SC 121

16. The appellants/claimants is entitled to a sum of Rs.34,12,429/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.
17. The learned Advocate for the appellant/claimants submits that the appellant/claimants withdrew a sum of Rs. 4,44,400/-. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of 29,68,029/- along with 6% interest per annum from the date of filing of the claim application till the date of its realization before the office of the learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order.
18. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Howrah in M.A.C.C No. 197 of 2017 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
19. The instant appeal is disposed of accordingly.
20. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
21. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)