Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 510 of 2025

Archana Chakraborty & Anr.
Versus
The New India Assurance Company Ltd. & Anr.

For the Appellants	:	Mr. Amit Ranjan Roy
For the Respondent No.1/ Insurance co.	:	Ms. Sucharita Paul
Heard on & Judgment on	:	19th June, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been filed against the judgment and award dated 25th August, 2022 passed by the Learned Additional District & Sessions Judge, 1st Court, Asansol cum Judge Motor Accident Claims Tribunal, Paschim Bardhaman in M.A.C. Case No. 10 of 2017/227 of 2016.
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 27.06.2016 at about 10 P.M. Senraleigh Road near Jubli Petrol Pump with the involvement of the offending vehicle being a motor cycle bearing registration No. WB-44C/7547 which at an exceeding speed rashly and negligently collided with the motor cycle bearing registration No. WB-38S/6963 driven by the victim resulting in his sudden fall sustaining injuries and was subsequently admitted at Asansol District Hospital where he succumbed to the same.

4. Learned Advocate representing the appellants/claimants submitted to have filed the instant appeal exclusively on the ground of the income of the victim being wrongly assessed by the Learned Tribunal disregarding the Income Tax Rreturn filed against his income for the year 2015-16 marked as Ext.10.

5. The Learned Advocate representing the respondent No.1/Insurance Company refuted the contentions of the Learned Advocate representing the appellants/claimants confirming the assessment of the income leading to the compensation granted by the Learned Tribunal.

6. Heard the submission of the Learned Advocates representing both the parties.

7. 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.

8. The learned Tribunal in impugned judgment and order pronounced in MAC Case No. 10 of 2017/227 of 2016 *inter alia* observed follows:

> "***It appears from the income Tax Return Ext.10 that his head of income is shown from business and also from other sources. But fact remains there is no evidence in the record that the victim had any business.***
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> ***Now it appears from the trend of the register of wages that the victim was not engaged daily working day of a month in his job and therefore his monthly wages vary month to month. So considering all aspects in my view the average monthly income from the daily wages under the said unregistered company if decided to the tune of Rs. 9000/- per month then it will be just and proper.***
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> ***A salary certificate has been filed by the learned Advocate Subrata Kumar Mallick in favour of deceased Pankaj Chakraborty Ext.9 to the effect that the victim Pankaj Chakraborty was working as per time accountant in his chamber from last three years and his remuneration Rs. 4000/- per month.***
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> ***The victim work as accountant only for four months in the chamber of the learned advocate and the job was casual in nature. Since at the time of calculation of compensation future prospect of the deceased will be added so such casual income should not be taken as fix monthly salary. Therefore considering all I hold that monthly income of the deceased is Rs. 9000/- per month. So his yearly income will be Rs. 9000/- x 12 = 1,08,000/-***".

9. The evidence of P.W.3 revealed the victim to have been an employee of UK Enterprises for a particular period i.e. December 2015 to June 2016. He further submitted the authorization letter to have been marked as Ext.7 the original register of wages marked as Exts. 8, 8/1, 8/2 as well as salary sheet marked as Ext.8/3 collectively. The P.W.4 recounted the victim to have worked in his chamber assisting him in his advocacy from 6 p.m. to 9 p.m. in the evening everyday at a remuneration of Rs. 4000/ per month. P.W.4 had issued a certificate to that effect signed by him which was marked as Ext.9. The Income Tax Return filed by the claimants marked as Ext. 10 was originally filed on 28th March, 2016 prior to the date of the accident. The Learned Tribunal regarded the aforesaid Income Tax Return marked as Ext.10 exclusively on the ground that the claimants were unable to prove that the victim was operating in any kind of business. The Income Tax Return itself is a repository of the fact of income of an Income Tax Payer submitted at the concerned department. Unless and until the legality of that document is challenged to be contrary to the income reflected in the Income Tax Return it is to be considered as the valid income of the victim against any assessment/financial year. The claimants had conclusively established two distinct sources of income of the victim apart

from the claim of any business. The Income Tax Return filed by the claimants as such had been adequate and appropriate enough to justify the claim. The observation of the Learned Tribunal to refuse the compensation based on the Income Tax Return is unacceptable.

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. 16,12,000/- is modified as follows:

Annual Income	Rs. 1,98,693/-
Future Prospect to be added(40%)	Rs. 79,478/-
	Rs. 2,78,171/-
1/3rd Personal Expenses	Rs. 92,723.6/-
	Rs. 1,85,447.4p/-
Multiplier to be "15"	X 15
	Rs. 27,81,711/--
General Damages	Rs. 77,000/-
	Rs. 28,58,711/-
Less	Rs. 16,12,000/-
Entitlement	Rs. 12,46,711/-

11. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 16,12,000/- The appellants/claimants are entitled to a sum of Rs. 12,46,711/- along with interest at the rate of 6%per annum to be

1 2017(4)TAC 673(S.C)
[2] (2009) 6 SC 121

paid from the date of filing of the claim application i.e. 20.12.2016 till the date of realization.

12. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 12,46,711/- along with interest as aforesaid before the office of the learned Registrar General High Court at Calcutta within four months from the date of passing of this order.

13. In view of the observation of the Hon'ble Supreme Court in Parminder Singh Vs. Honey Goyal & Ors.3. The appellants/claimants are to provide the details of Bank Accounts held in the name of the appellants/claimants at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

14. 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 impugned judgment and award passed by the Learned Additional District & Sessions Judge, 1st Court, Asansol cum Judge Motor Accident Claims Tribunal, Paschim Bardhaman in M.A.C. Case No. 10 of 2017/227 of 2016 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.

15. The instant appeal is disposed of accordingly.

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

17. 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.

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[3] 2025 INSC 361