

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 981 of 2021

National Insurance Company Limited

Versus

Smt. Smritikana Das & Ors.

With

COT 66 of 2017

Smt. Smritikana Das & Ors.

Vs.

National Insurance Company Limited

For the appellant/insurance Co. : Mr. Parimal Kumar Pahari

For the respondent No.1 to 4/claimants :Mr. Jayanta Mondal
Mr. Sayantan Rakshit

Heard & Judgment on : 22nd January, 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 30th November, 2017 passed by the Learned Judge, Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court-I, Tamluk, Purba Medinipur in M.A.C. Case No. 185 of 2013.
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 25.12.2012 at 8.00 p.m. in front of khodambari School at Chandipur- Nandigram Road within the jurisdiction of Nandigram Police Station in the District of Purba Medinipur with the involvement of the offending vehicle being a

truck bearing registration No. WB-29-4051 which hit the victim while he was standing along with his motor cycle bearing registration No. WB-30H/0453 in front of Khodambari School at an exceeding speed which resulted in the death of the victim at Purba Medinipur District Hospital.

4. The Learned Advocate representing the appellant/insurance company submitted that the appellant/insurance company was not liable to pay compensation amount since the driver of the offending vehicle did not have possessed the adequate licence to drive the tractor as he was entitled to drive light motor vehicles according to the description mentioned in the driving licence whereas he was driving light motor transport vehicle. The learned advocate representing the appellant/insurance company further submitted in case of the age of the victim to be 27 on the date of the accident, the multiplier should have been "17" which was erroneously considered as "18" by the Learned Tribunal.
5. The Learned Advocate representing the respondents/claimants submitted to have filed a cross-objection being COT 66 of 2016 which inter alia stated that the Learned Tribunal did not grant the component of future prospect to the victim who worked as a Lens Nayek (MP)/Sepai Indian Army at the relevant point of his death. He further submitted that the general damages to the extent of Rs. 70,000/- was not considered by the Learned Tribunal and a sum of Rs. 4000/- was granted contrary to the principles of the Hon'ble Supreme Court as laid down in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*
6. The evidence of P.W.3 revealed the victim to have been posted as Lens Nayek (MP) with 29th Infantry Division Unit at Pathankot Mannu

Cantonment of Indian army. The attested copy of the document produced by the P.W.3 concerning of the appointment letter, service book, pay slip and destroyed identity card were marked as Ext. 8 series. The last pay certificate of the victim was marked as Ext. 9. The Learned Tribunal disregarded the oral as well as documentary evidence of P.W.3 had opined as follows:

" Victim was a class X passed sepoy in the Indian Army at the time of his death. The nature of his job does not require any special qualification or skill. It is not expected that in near future the prospect of his employment would improve. At utmost there would have been regular increments and change in the pay scale. The spirit laid down in the case of Sarala Verma(Supra) centering adding of future prospect with the actual income of the victim of a road accident does not match with the nature of employment of the victim for adding any amount with his actual income towards future prospect. Considering the nature of the employment of the victim, I find no reason to add any amount with his actual income towards future prospect".

7. Such observation of the Learned Tribunal cannot be accepted. It is not within the domain of the Learned Tribunal to predict that the victim if alive would not have been promoted further or would not have been entitled further benefits including career advancement in his service. The amount of compensation granted loss of consortium, loss of estate and funeral expenses should have been granted as Rs. 70,000/- are not Rs. 4,000/-.

8. In view of the observation of the Hon'ble Supreme Court in M/S. Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi & Ors.¹ which states the Paragraph 131 as follows:

"131. Our conclusions following the above discussion are as under

(I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7.500 kg, is permitted to operate a "Transport Vehicle" without needing additional authorization under Section 10(2) (e) of the MV Act specifically for the "Transport Vehicle" class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

(II) The Second Part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a "Transport Vehicle" does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving "Transport Vehicle" would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 k.g. i.e. 'medium goods vehicle', 'medium passenger vehicle' 'heavy goods vehicle' and 'heavy passenger vehicle'.

¹ Civil Appeal No. 841 of 2018

(IV) The decision in Mukund Dewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment”.

9. The submission of the learned advocate representing the appellant/insurance company cannot be considered.

Considering the observations of the Hon’ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr*² and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr*³, the impugned award of Rs. 40,00,000/- is modified as follows:

Annual Income	Rs. 3,09,000/-
	Rs. 13,000
Less Tax liability	Rs. 2,96,000/-
	Rs. 1,48,000/-
Future Prospect to be added(50%)	-----
	Rs. 4,44,000/-
	Rs. 1,11,000/-
Less 1/4 th Personal Expenses	Rs. 3,33,00/-
Multiplier to be “17”	X 17
Add conventional Head	Rs. 56,61,000/-
Loss of consortium Rs. 40,000/-	Rs. 84,000/-
Loss of Estate Rs. 15,000/-	Rs. 57,45,000/-
Funeral Exp. Rs. 15,000/-	
	Rs. 70,000/-
Add : 20%	Rs. 14,000/-
	Rs. 84,000/-
Entitlement	Rs. 57,45,000/-

10. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had deposited two distinct cheques i.e. Rs. 25,000 +

1 2017(4)TAC 673(S.C)
³ (2009) 6 SC 121

Rs.50,58,185/- totaling Rs. 50,83,185/. The same must have carried some interest.

11. The respondent Nos. 1 and 4/claimants are entitled to receive the balance amount of Rs. Rs. 57,45,000/- interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
12. The Learned Advocate representing the appellant/insurance company is to deposit the remaining balance amount before the Office of the Learned Registrar General, High Court at Calcutta within six weeks before passing of this order.
13. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent No.1 to 4/claimants as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court-I, Tamluk, Purba Medinipur, in M.A.C. Case No. 185 of 2013 within six weeks from the date of passing of this order, on proof of proper identification of the respondent Nos.1 to 4/claimants subject to payment of ad valorem Courts fees.
14. The instant appeal is disposed of accordingly.
15. The interim order if any stand vacated.
16. The applications if any stands disposed of.
17. The TCR be sent down to the concerned Tribunal forthwith.
18. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.Ar. ct.

(Ananya Bandyopadhyay, J.)