Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 768 of 2022

Ashmantara Bibi @ Ashman Tara Bibi Molla @ Ashmantara Bewa & Ors.
Versus
The National Insurance Company Ltd. & Anr.

For the Appellant	:	Mr. Jayanta Kumar Mondal Mr. Sayantan Rakshit.
For the Respondent No.1/ Insurance co.	:	Mr. Rajesh Singh.
Heard & Judgment on	:	28th 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 25th June, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, 6th Court, Alipore, South 24 Parganas in M.A.C. Case No. 30 of 2017.
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 27th June, 2014 at about 4.30 p.m. with the involvement of the offending vehicle being a lorry bearing registration No. AP 37 TD-0199 which approaching at an exceeding speed rashly and negligently hit the motor cycle bearing registration No. WB-20AF-8926 being driven by the victim from behind which resulted in his fall, by virtue of which he sustained grievous injuries and was declared "brought dead" at Amtala Rural Hospital at Bishnupur, 24 Parganas (South).

4. The Learned Advocate representing the appellants/claimants submitted that the learned Tribunal did not consider the income of the victim on the basis of the document marked as Ext. 29 wherein the last income tax return submitted revealed the annual income of the victim after deduction of tax to be Rs. 2,82,671/**-.** Moreover, since the number of claimants at the time of the accident of the aforesaid MAC case before the concerned Tribunal had been four, the learned Tribunal erroneously deducted 1/3rd on account of personal expenditure.

5. The Learned Advocate representing the respondent No.1/insurance company submitted during the pendency of the MAC Case No. 30 of 2017 as aforesaid before the learned Tribunal, the father of the deceased victim had expired. Moreover, there had been absence of specific averments in the claim application as well as evidence of P.W.1 being the wife of the deceased victim that the father of the victim was dependent on the earnings of the same. Therefore, the learned Tribunal was justified in deducting 1/3rd towards personal expenditure.

6. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. 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 extent of issues agitated by the learned Advocates representing the respective parties. Indubitably, the document marked as Ext. 29 was not considered by the learned Tribunal for evaluating the annual income of the victim. Since the father of the victim had expired during the pendency of the MAC Case No. 30 of 2017 as aforesaid and the wife and other legal heirs had been brought on record, the liability towards expenses to have been incurred by the father becomes redundant and as such the learned Tribunal was justified in deducting 1/3rd towards personal expenditure contrary to the claim of the learned Advocate representing the appellants/claimants to be 1/4th.

7. Since the appellant No.2 is still minor, the office of the learned Registrar General, High Court at Calcutta is to deposit the share of the appellant No.2 in a Nationalized Bank in an auto renewable fixed deposit for a temporary period till she attains majority. The

interest accrued from time to time is to be defrayed in favour of her mother till she attains majority.

8. The impugned award of Rs. 9,10,000/- is modified as follows:

Annual Income	Rs. 2,87,590/-
I. Tax	Rs. 4,919/-
	Rs. 2,82,671/-
Future Prospect to be added(250%)	Rs. 70,667/-
	Rs. 3,53,338/-
1/3rd Deduction Personal Expenses	Rs. 1,17,779/-
	Rs. 2,35,559/-
Multiplier to be "14"	X 14
	Rs. 32,97,826/-
General Damages	Rs. 77,000/-
	Rs. 33,74,826/-
Less Award	Rs. 9,10,000/-
Entitlement	Rs. 24,64,826/-

9. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 9,10,000/-. The appellants/claimants are entitled to a sum of Rs. 24,64,826/- 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 its actual realization.

10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 24,64,826/- 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 .

11. 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 Judge, Motor Accident Claims Tribunal, 6th Court, Alipore, South 24 Parganas in M.A.C. Case No. 30 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees within four weeks.

12. The instant appeal is disposed of accordingly.

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

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

15. 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.