

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 856 of 2022

**Bajaj Allianz General Insurance Company Limited
Versus
Kajal Das & Ors.**

For the appellant/insurance Co. : Mr. Soumalya Ganguli

For the respondent no.1 to 3/claimants : Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit

Heard & Judgment on : 17th February, 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 20th January, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Paschim Medinipur in M.A.C. Case No. 318 of 2015.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed on account of the death of the victim in an accident which occurred on 23.02.2015 at about 11.30 a.m. on the southern side of the NH-6 Road Paschim Medinipur with the involvement of the offending vehicle being a Hyundai Car bearing registration No. WB-0Z/AC/7714 which hit the victim standing at the bus stand to board a bus which approached at an exceeding speed rashly and negligently which resulted the victim sustained grievous injury who were '**brought dead**' at Debra Rural Hospital.

4. Learned Advocate representing the appellant/Insurance Company submitted that the Learned Tribunal considered the monthly income of the victim to be Rs. 20,000/- per month contrary to the applicant of Rs. 8000/- in the application under Section 166 of the Motor Vehicles Act in absence of proper evidence that the victim worked as a plumber under the Debra Gram Panchayat. It was further submitted that in accordance with the circular issued by the Government of West Bengal, Office of the Labour Commissioner dated 31.12.2020 the category of the victim who worked as a plumber fell within "highly skilled rate employment" entitling him to a sum of Rs. 10,236 falling under the Zone-B.
5. The Learned Advocate representing the respondent Nos.1 to 3 /claimants submitted that P.W.3 being the Pradhan of the Debra II Gram Panchayet appeared before the Learned Tribunal and Exhibited the documents marked as Ext. 11 collectively which endorsed the fact of work order being issued in favour of the victim to deal with the repair of tubewells in the panchayet areas entitling him to a monthly income of Rs. 20,000/ - to 25,000/- and the Learned Tribunal had rightly assessed the monthly income of Rs. 20,000/- while computing the award.
6. The occurrence of the accident, the involvement of the offending vehicle, insurance policy, driving license, route permit etc., monthly income of the deceased victim and other ancillary issues have not been disputed by the learned advocate representing the appellant/insurance company. The documents marked as Exts. 11 to 14 collectively did not mention that the work order was issued in favour of the victim or that the victim was entrusted to repair the tubewell in the localities mentioned therein nor any document was

produced with regard to the receipt of payment from the panchyet. It has been proved that the victim was a plumber and this Court is of the opinion that in accordance with the earlier circular mentioned above a monthly income of Rs. 10,236/- can be assessed.

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. 20,06,000/- is modified as follows:

Annual Income (10,236x12)	Rs. 1,22,832/-
Future Prospect to be added(10%)	Rs. 12,283/-
	Rs. 1,35,115/-
Less 1/3 rd for personal expenses	Rs. 45,038/-
	Rs. 90,077.00/-
Multiplier to be “11”	X 11
	Rs. 9,90,847/-
General Damages (Rs.40,000+15,000+15,000) = 70,000 + 20% Entitlement	Rs. 84,000/-
	Rs. 10,74,847/-

8. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.28,58,883/- through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The respondent Nos. 1 to 3/claimants are entitled to receive the balance amount of Rs. Rs. 10,74,847/- along with interest at the

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

rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

9. The office of the Registrar General, High Court, Calcutta is directed to calculate the award passed by this Court today together with interest as aforesaid and shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion the same to the present respondent No.1 to 3 /claimants as mentioned in the award passed by learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Paschim Medinipur in M.A.C. Case No. 318 of 2015 on proof of proper identification of the respondent Nos.1 to 3/claimants subject to payment of ad valorem Courts fees and refund the differential amount through a cheque to the learned advocate for the insurance company for the accounts of the insurance company.
10. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company for the accounts of the insurance company.
11. The instant appeal is disposed of accordingly.
12. The interim order if any stand vacated.
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.

c.m Ar. ct.

(Ananya Bandyopadhyay, J.)

