

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 674 of 2024
Samar Chandra Nayek & Anr
Versus
The United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy

...for the Appellants/claimants.

Mr. Sanjay Paul
Ms. Jaita Ghosh

...for the Respondent No.1/insurance company.

Heard on: January 9, 2025.

Judgment on: January 9, 2025.

Ananya Bandyopadhyay, J:-

1. Both the Learned Advocates representing the appellants/claimants and the respondent No.1/insurance company are present.
2. The instant appeal had been filed against the judgment and award dated 31st January, 2024 passed by the learned Judge, Motor Accident Claims Tribunal and Additional District & Sessions Judge, 5th Court, Paschim Medinipur in M.A.C. Case No. 252 of 2017.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the appellants/claimants on account of the death of the victim in an accident which occurred on 13th January, 2017 at about 11 p.m. near Mondal Hotel at Keyaboni within the jurisdiction of Garhbeta Police Station with the involvement of the offending vehicle bearing Registration No. CG-10C/7055 (truck) which at an exceeding speed dashed the victim, who was admitted at Darigeria Rural Hospital wherefrom he was transferred to M.M.C.H. and finally succumbed to

his injuries at Medica Super Specialty Hospital at Kolkata on 14.01.2017 at 1.00 p.m.

4. The Learned Tribunal disposed of the issues framed on appreciation of both oral and documentary evidence and awarded through the impugned judgment a sum of Rs. 6,63,600/- as compensation in favour of the appellants/claimants at the rate of 6.5% interest per annum since 12.06.2017 till realisation of the amount.
5. Heard the rival contentions of the learned advocates for the appellants/claimants as well as respondent No.1/insurance company.
6. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal despite oral and documentary evidence did not consider the income of the victim to be Rs. 8000/- per month. More-over, the sum of Rs. 62,776/- towards medical expenses was not granted. The amount under the head of "future prospect" was granted to the extent of 10% instead of 40%.
7. The Learned Advocate representing the respondent No.1/insurance company submitted that the appellants/claimants failed to proof the monthly income of the victim to be Rs. 8000/- per month in the absence of relevant documents concerning the salary slip and register of staff etc. and therefore, the Learned Tribunal had justifiably considered the monthly income of the victim to be Rs. 6000/- per month.
8. The evidence of P.W. 3 the authorised representative of the Medica Super Specialty Hospital denoted the expenditure of Rs. 62,776/- annexed with the documents marked as Ext. 8 which should have been considered by the Learned Tribunal while granting the compensation in faour of the appellants/claimants. The age of the victim on the relevant date of accident was 31 years in terms of the documents marked as Ext. 4. The Post Mortem report marked as Ext. 3 mentioned the age of

the victim to be 30 years. However, the same is below 40 years. The amount under the head of “future prospect” should have been granted to the extent of 40% considering the age of the victim computed less than 40 years. The evidence of P.W.4 co-employee of the deceased victim stated that the employee used to pay a sum of Rs. 8000/- to the victim as a monthly salary and endorsed the same through a certificate marked as Ext. 10 during cross-examination P.W.4 did not deny the existence of any employment regarding of the victim viz along with wage register towards payment of salary. The P.W.4 co-employee during cross-examination stated that he did not bring the aforesaid record. However, the Learned Advocate representing the respondent No.1/insurance company did not seek for the production of such document through an application before the Learned Tribunal and, therefore, the veracity of the document marked as Ext. 8 along with oral deposition of P.W.4 appears to be sacrosanct. The monthly income of the deceased victim in view of the deposition of P.W.4 as well as document marked as Ext. 10 is considered to be Rs. 8000/- per month.

9. 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. 6,63,600/- is modified as follows:

Monthly Income	Rs. 8000/-
Annual Income	12
	Rs. 96,000/-
Future Prospects (40%)	Rs. 38,000/-
	Rs. 1,34,400/-
Less: Deduction (50%)	Rs. 67,200/-
	Rs. 67,200/-
Multiplier to be “16”	X 16
	Rs. 10,75,200/-

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

² (2009) 6 SC 121

Medical Expenses	Rs. 10,75,200/- Rs. 62,776/-
General Damages	Rs. 11,37,976/- Rs. 33,000/-
Less Award Entitlement	Rs. 11,70,976/- Rs. 6,63,600/- Rs. 5,07,376/-

10. The Learned Advocate for the appellants/claimants submitted the appellants/claimants have withdrawn a sum of Rs. 6,63,600/-. The appellants/claimants are entitled to a sum of Rs. 5,07,376/-/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 12.06.2017 under Section 166 of the Motor Vehicles Act till the date of its actual realization.
11. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,07,376/- along with 6 % per cent interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within a period of six weeks from the passing of this order.
12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal and Additional District & Sessions Judge, 5th Court, Paschim Medinipur in M.A.C. Case No. 252 of 2017 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.
13. The instant appeal is disposed of accordingly.
14. Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m.

(Ananya Bandyopadhyay, J.)

