IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 523 of 2023

National Insurance Co. Ltd.
-Vs-
Sanchita Patra & Ors.

For the Appellants/
Insurance Company : Mr. Deb Narayan Roy

For the Respondents : Mr. Ashique Mandal

Heard on & Judgment on : 2nd April, 2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading ***"For Hearing"*** for further clarification.

2. Both the Learned Advocates representing the appellant/Insurance Company and the respondent Nos. 1 and 2/claimants are present.

3. Three claimants of deceased Uma Patra filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 7th Court, Alipore being MAC Case No. 31 of 2020 claiming an award of Rs. 36,90,000/- only along with cost and interest or just compensation, whichever is higher to the death of the victim in a road traffic accident on 24.09.2020 around 2:15 pm. The offending vehicle, a truck bearing Registration No. WB-29B/2259 hit the aforesaid victim rashly and negligently while the same

was riding on a motorcycle as a pillion rider on a motorcycle near Namchhara Club. The motorcycle was hit from behind by the offending vehicle which caused the victim to fall on the road and to be run over by the truck. Consequently, the victim expired on the spot.

4. Subsequently, based on a complaint, Joypur P.S. Case No. 82/2020 dated 24.09.2020 under Sections 279/304-A/427/337 of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.

5. The owner of the vehicle appeared in the case and filed written statement with the contention that the risk of driving the involved vehicle (Truck) on public place was duly covered under of policy and insurance issued by the National Insurance Company Limited, which was valid from 07.11.2019 to 06.11.2020. The aforesaid MAC case was allowed ex-parte against the owner of the vehicle.

6. The respondent, National Insurance Co. contested the aforesaid MAC case.

7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.35,23,092/- with an interest payable at 7% per annum.

8. The Learned Advocate representing the appellant submitted as follows:-

    a. A notional income of Rs.25,087/- per month of the victim was accepted by the learned tribunal considering 1/3rd income of the deceased's husband's salary though the deceased was a housewife had no income.

b. Future Prospect was set at 20% despite the fact that she had no income or permanent job.

c. The learned tribunal allowed 7% interest on the awarded amount instead of 6% per annum

d. The learned tribunal erred by allowing Rs.96,000/- for two children under the head of 'parental consortium'.

e. The victim was solely responsible for the accident.

f. An excessive amount of compensation was allowed without going through the actual income of the victim/deceased.

9. The Learned Advocate representing the respondents argued that the income of victim was wrongly assessed at Rs. 25,087/- and relied on the following judgments in ***Arun Kumar Agrawal v. National Insurance Co. Ltd***.[1], in ***Pratima Sahoo V. Cholamandalam MS General Insurance Co. Ltd.***[2] **,** in ***Kirti & Anr. v. Oriental Insurance Co. Ltd.***[3]

10. It was further submitted that the Learned Advocate representing the respondents/claimants that awarding future prospect even in cases of notional income was no more res integra. The Hon'ble Supreme Court mandated awarding compensation for loss of future prospects @ 25% of the income for people who are self-employed or on fixed salary and those who belong to the age group of 40-50 years and relied upon ***National Insurance Co. Ltd. V. Pranay Sethi & Ors***[4].

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[1] (2010) 9 SCC 218
[2] ***(2023) SCC OnLine Cal 3115***
[3] ***(2021) 2 SCC 166***
[4] (2017) 16 SCC 680

11. Subsequently, the benefit of awarding compensation for loss of future prospects had been extended to people having notional income as well and relied on ***Hem Raj V. Oriental Insurance Co. Ltd. & Ors.***[5]

12. Heard the submission of the learned advocates representing the respective parties.

13. Since the occurrence of the accident and other ancillary issues have not been disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the points agitated by the Learned Advocate representing the appellant/insurance company as well as respondents/claimants.

14. The learned Tribunal considering the observations of the Hon'ble Supreme Court in cases report in 2022 0 Supreme Court (SC) 604, 2010(9) 2018 has rightly assessed the involvement of the income of the claimant housewife to be Rs. 25,087/- per month. Since the elaborate reasons were cited in favour of the deceased victim who had been a homemaker not professionally attached beyond precincts of her house. The element of future prospect should have been considered to the extent of 25% with a modification in the amount of compensation granted towards loss of consortium.

15. Considering the observations of the Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr6 and Sarala Verma & Ors.

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[5] ***(2018) 15 SCC 654***

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

Vs. Delhi Transport Corporation & Anr.[7] The impugned award of Rs. 35,23,092/- is modified as follows:

Monthly Income (1/3rd Rs. 75,260/)	Rs. 25,087/-
Annual Income	X 12
	Rs. 3,01,044/-
Less 1/3rd Personal Expenses	Rs. 1,00,348/-

	Rs. 2,00,696/-
Future prospect (25%)	Rs. 50,174/-
	Rs. 2,50,870/-
Multiplier to be "14"	X 14
	Rs. 35,12,180/-
	Rs. 84,000/-
Non pecuniary damages	Rs. 35,96,180/-

16. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 41,66,753=(25,000/- + Rs. 41,41,753) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

17. The Respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 35,96,180/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 24.11.2020 till the date of actual realization.

18. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent Nos. 1 to 3/claimants in equal proportion as mentioned in the impugned judgment

[7] (2009) 6 SC 121

passed by the learned Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 7th Court, Alipore being MAC Case No. 31 of 2020 on proof of proper identification of the respondent No.1 to 3/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

19. The instant appeal is disposed of accordingly.
20. The TCR be sent down to the concerned Tribunal forthwith.
21. The pending applications, if any, stands disposed of.
22. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)