

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 762 of 2024

**Sk. Rabiul Haque
Versus**

The United India Insurance Company Ltd. & Anr.

For the Appellant : Mr. Amit Ranjan Roy

For the Respondent No.1/
Insurance co. : Mr. Rajesh Singh.

Heard & Judgment on : 11th March, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal has been filed against the judgment and award dated 30th January, 2024 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court-II, Tamluk, Purba Medinipur in M.A.C. Case No. 100 of 2016.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant who had suffered an accident which

occurred on 31st January, 2016 at about 7.45 p.m. near Kastakhali Chotopul on NH-41 whereby the offending vehicle being Mahindra SUV bearing registration no. WB-30Q/5353 had hit the victim who was thereafter admitted at Purba Medinipur District Hospital and subsequently transferred to N.R.S. Medical Collage and Hospital on 01.02.2016 and was finally admitted at Calcutta Heart Clinic & Hospital from 01.02.2016 to 11.02.2016.

4. Learned Advocate representing the appellant/claimant submitted that the Learned Tribunal had erroneously computed the monthly income of the victim to be Rs. 5000/- instead of Rs. 7000/- as claimed in the claim application being a driver. Accordingly, the skilled worker will be entitled to Rs. 8000/- per month as per the Government notification. The learned advocate representing the appellant/claimant further submitted that the Learned Tribunal erroneously granted the interest to be computed at the rate of 6% per annum from the date of recording of the evidence till the date of realization of the compensation award.
5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the victim could not through oral as well as documentary evidence prove that he had been pursuing the career of a driver. The victim did not submit his driving licence before the Court to endorse his claim of being

a driver and, therefore Learned Tribunal had been justified in considering the notional income of the victim to the extent of Rs. 5000/- per month.

6. Considered the rival contentions of the Learned Advocates representing the respective parties.
7. The Learned Tribunal had rightly observed that in absence of oral as well as documentary evidence the victim's claim could not have been assessed to be in the profession of a driver earning of Rs. 7000/- per month and had rightly considered the notional income of Rs. 5000/- per month. This Court, therefore, is not inclined to interfere with the same. However, the Learned Tribunal had erroneously granted rate of interest to have been computed from the date of recording of the evidence which should have been from the date of filing of the claim application till the date of its actual realization.
8. 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. 9,91,966/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	Rs. 60,000/-
Future Prospect to be added(40%)	Rs. 24,000/-
	<u>Rs. 84,000/-</u>

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

² (2009) 6 SC 121

Disability (45%)	Rs. 37,800/-
	Rs. 37,800/-
Multiplier to be "17"	X 17
	Rs. 6,42,600/-
Pain and suffering	Rs. 50,000/-
Medical Expenses	Rs. 6,92,600/-
	Rs. 3,39,366/-
Less	Rs. 10,31,966/-
	Rs. 9,91,966/-
Entitlement	Rs. 40,000/-

9. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 9,91,966/- along with interest at the rate of 6% per annum from the date of recording of the evidence till the date of realization from the Learned Tribunal. The appellant/claimant are entitled to a sum of Rs. 40,000/- along with 6% interest per annum to be paid from the date of filing of the claim application till the date of recording evidence i.e. 06.04.2021
10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 40,000/- 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 appellant/claimant as mentioned in the award passed by

the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court-II, Tamluk, Purba Medinipur in M.A.C. Case No. 100 of 2016 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.

12. The instant appeal is disposed of accordingly.
13. The pending applications if any stands disposed of.
14. 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.