

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 998 of 2023

**Totan Das & Ors.
Versus
United India Insurance Company Limited & Anr.**

For the Appellants/claimants : Mr. Jayanta Kumar Mandal
Mr. Sayantan Rakshit

For the Respondent No.1 : Mr. Sanjoy Paul
Ms. Jaita Ghosh.

Heard & Judgment on : 6th February, 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 09.02.2023 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 3rd Court, Paschim Medinipore in M.A.C. Case No. 207/2022.
3. An application under Section 166 of the Motor Vehicles Act had been filed due to the death of the victim in an accident which occurred on 17.02.2022 at about 10:00 P.M. with the involvement of the offending vehicle being Maruti Omni bearing registration no. WB-36A/3952 which collided with the motor cycle bearing registration no. WB-50B/6308 being driven by the victim at NH-6 near Dutta hotel at Rashmi Metallica Gate No. 3 within the jurisdiction of

Kharagpur Local Police Station. The victim having suffered serious injuries succumbed to the same on 21.02.2022.

4. The Learned Advocate representing the appellants/claimants submitted that the victim had been a vegetable vendor and used to earn Rs.10,000/- per month which was not considered by the learned Tribunal while computing the amount of compensation and a sum of Rs.6,000/- per month was considered to be the income of the deceased victim.
5. The Learned Advocate representing the respondent No.1/Insurance Company submitted that in absence of oral and documentary evidence the learned Tribunal had rightly judged the monthly income of the victim to be Rs.6,000/-. Moreover, a sum of Rs.2,09,000/- was granted under the conventional head which otherwise should have been Rs.70,000/- with regard to the general damages.
6. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, insurance certificate and route permit etc. are not disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of considering the monthly income of the victim as well as the amount payable towards general damages. The accident occurred in the year 2022 and considering the fiscal index at the relevant time the victim being a vegetable seller could have earned a sum of Rs.8,000/- per month which is probable. The appellants/claimants is entitled to a sum of Rs.70,000/- towards general damages instead of Rs.2,09,000/-.

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. 14,18,600/- is modified as follows:

Monthly Income	Rs. 8000/-
Annual Income	Rs. 96,000/-
Future Prospect to be added(40%)	Rs. 38,400/-
	Rs. 1,34,400/-
1/4 th Deduction	Rs. 33,600/-
Personal Expenses	-----
	Rs. 1,00,800/-
Multiplier to be "16"	X 16
Conventional Head	Rs. 16,12,800/-
Loss of Consortium 40,000/	
Loss of Estate 15,000/-	Rs. 70,000/-
Funeral Exp. 15,000/-	Rs. 16,82,800/-
	Rs. 14,18,600/-
Less Award	Rs. 2,64,200/-
Entitlement	

7. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 14,18,600/-. The appellants/claimants are entitled to a sum of Rs. 2,64,200/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 05.05.2022 till the date of its actual realization.
8. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,64,200/- 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 .
9. 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 Judge, Fast Track 3rd Court, Paschim Medinipore

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

² (2009) 6 SC 121

in M.A.C. Case No. 207/2022 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

10. The instant appeal is disposed of accordingly.
11. The pending applications if any stands disposed of.
12. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R./C.M. A.R.