

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 722 of 2022

**The Deputy Manager, South Bengal State Transport Corporation
Versus**

**Sushama Oram & Ors.
With**

**COT 117 of 2019
Sushama Oram & Ors.
Vs.**

The Deputy Manager, South Bengal State Transport Corporation

For the Appellant : Ms. Debasree Dhamali
Ms. Riya Ghosh

For the Respondent No.1 to 4/
Claimants : Sk. Abu Abbasuddin,
Ms. Nahid Rahaman

Heard on : 25.09.2024

Judgment on : 24th April, 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 29.07.2015 passed by the learned Additional District

& Sessions Judge, 15th Court, Motor Accident Claim Tribunal, Alipore in M.A.C. Case No. 8 of 2010.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 07.12.2007 at about 16.05 hours in front of 145, B.B. Ganguly Street, Kolkata, with the involvement of the offending vehicle being a bus belonging to the SBSTC bearing Registration No. WB-39-3364 which at an exceeding speed rashly and negligently hit the victim who was a passerby and on transmission to N.R.S. Medical College and Hospital was declared as "brought dead".
4. Learned Advocate representing the appellant/SBSTC submitted that the corporation being the owner of the bus was not made a party. However, an employee being the Manager of the SBSTC was impleaded as party. More-over, the driver of the offending bus did not drive the bus rashly and negligently. Accordingly, the offending bus was not involved in the accident. More-over, the eye witnesses P.W.3 was not mentioned in the charge-sheet to be a witness by the Investigating Officer. Therefore, his trustworthiness is doubtful. The evidence recorded in the Court by P.W.2 was not signed by the presiding officer which entailed the said deposition of the P.W.2 to be nugatory.

5. The learned Advocate representing the respondent No.1 to 4/claimants submitted that the learned Tribunal did not grant any compensation on account of future prospect and general damages was assessed to the extent of Rs. 5000/- instead of Rs.77,000/-. More-over, the number of dependents were 4 and the learned Tribunal had deducted $1/3^{\text{rd}}$ for personal expenses instead of $1/4^{\text{th}}$.
6. Pertinently, the Corporation was not impleaded as a party. However, the accident occurred in the year of 2007 and after a lapse of 18 years in view of the intent of beneficial legislation the Deputy Manager, South Bengal State Transport Corporation representing the legal entity of the Corporation could be accepted. However, it should not to be a precedent where the Corporation was required under the law to be impleaded as a party should be impleaded. Non-impleadment of the Corporation at this stage is not to affect the cause of the claimants to their detriment in view of the objection of beneficial legislation. The document marked as Ext. 1, Ext.2 and Ext.4 evinced the fact that the offending vehicle was involved in the occurrence of the accident. More-over, the eye witness being P.W.3 not being named in the charge-sheet will not affect the veracity of his deposition in view of the cross examination by the

appellant/SBSTC. The evidence of P.W.2 in his cross - examination could not be controverted. Accordingly, the deposition of P.W.3 cannot be discarded. Inadvertent absence of signature of the presiding officer in the statement of recording of deposition of P.W.2 was not fatal being a technical lapse. In view of the aforesaid discussion the award granted by the learned Tribunal is modified to the extent including the future prospect to be given at 30 per cent, the general damages should have been increased from Rs. 5000/- to Rs. 77,000/- and 1/4th deduction to be accorded in view of the 4 dependence instead of 1/3rd.

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. 8,72,388/- is modified as follows:

Monthly Income	Rs. 8387/-
P. Tax	Rs. 90/-
Annual Income (Rs. 8,297 x12)	Rs. 8,297/-
	Rs. 99564/-
1/4 th Deduction towards personal expenses	Rs. 24,891/-
	Rs. 74,673/-
Future Prospect to be added(30%)	Rs. 22,401/-
Multiplier to be "13"	Rs. 97074/-
	X 13
General Damages	Rs. 12,61,962/-
	Rs. 77,000/-
Entitlement	Rs. 13,38,962/-

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

² (2009) 6 SC 121

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8. The learned Advocate representing the respondent Nos.1 to 4/claimants submitted to have withdrawn 50% deposited amount vide order dated 26.04.2022. The respondent Nos. 1 to 4/claimants are entitled to a sum of Rs. 4,66,575/- along with interest at the rate of 6% per annum to be paid from the date of filing of the claim application i.e. 4th March, 2008 till the date of realization. The respondent Nos. 1 to 4/claimants are also entitled to the rest 50% deposited amount which was lying before the office of the learned Registrar General, High Court at Calcutta along with accrued interest thereon.
9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 15,40,047/=(Rs. 25,000 + 15,15,047) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
10. The Learned Advocate for the appellant/SBSTC is to deposit Rs. 4,66,575/- 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 respondents/claimants with accrued interest as mentioned

in the award passed by the learned Additional District & Sessions Judge, 15th Court, Motor Accident Claim Tribunal, Alipore in M.A.C. Case No. 8 of 2010 on proof of proper identification of the respondent Nos. 1 to 4/claimants subject to payment of ad valorem Court's fees.

12. The instant appeal and cross objection are disposed of accordingly.
13. The pending applications if any stands disposed of.
14. The TCR be sent down to the concerned Tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)