

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1125 of 2022

**The New India Assurance Company Limited
Versus
Purnima Poddar & Ors.**

For the Appellant : Mr. Rajdeep Bhattacharyya.

For the Respondent Nos. 1 to 3 : Mr. Ashique Mondal.

Heard & Judgment on : 12th February, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent Nos. 1 to 3/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 30.06.2022 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Alipore, South 24-Parganas in M.A.C. Case No. 469/2019.
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 13.03.2019 at about 06:30 hours on A.P.C. Road in front of the premises No. 153/B near Khanna Hatt Bus Stop with the involvement of the offending vehicle being a Bus bearing registration no. WB-04/D/0068 which rashly and negligently in an exceeding speed hit the victim who instantaneously died being crushed under the wheels of the offending vehicle.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the claimants failed to prove either the avocation or the income of the victim to the extent of Rs.10,000/- per month as claimed in the application filed under Section 166 of the Motor Vehicles Act. Moreover, the learned Tribunal had erroneously assessed the monthly income of the victim to be Rs.9,000/- per month considering the prevalent rate of wages in accordance with the notification issued under the Minimum Wages Act. The learned Advocate representing the appellant/Insurance Company further submitted that the Hon'ble Supreme Court in various judgments assessed the monthly income of vendors to be Rs.6,000/- per month in absence of relevant documents as well as oral evidence. It was further submitted that the learned Tribunal had erroneously granted a sum of Rs.2,09,000/- towards general damages instead of Rs.84,000/-.
5. The learned Advocate representing the respondent Nos. 1 to 3/claimants submitted that the learned Tribunal did grant an

excess amount of Rs.2,09,000/- instead of Rs.84,000/- towards general damages, however, refuted the contention of the learned Advocate representing the appellant/Insurance Company in terms of the monthly income of the victim.

6. Considered the submissions of the learned Advocates representing both the parties.
7. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of considering the monthly income of the victim as well as the amount granted towards general damages. The learned Advocate representing the respondent Nos. 1 to 3/claimants submitted that a certificate had been issued by the Gariahat Indira Hawkers Union considering the status of the victim to be a hawker. The learned Advocate representing the appellant/Insurance Company submitted that the said document was not exhibited before the learned Tribunal. In the year 2019 the victim being a physically abled person of 54 years could have earned a sum of Rs.9,000/- per month as rightly assessed by the Tribunal considering the notification issued under the minimum rates of wages. A vendor or a hawker would be under no circumstances able to produce documentary evidence of his sell

and purchase where the income fell below the taxable amount and this Court will not be inclined to interfere with the monthly income as computed by the learned Tribunal. However, the learned Tribunal has erroneously considered the general damages to the extent of Rs.2,09,000/- instead of Rs.84,000/-.

8. Considering the observations of the Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 11,89,000/- is modified as follows:

Monthly Income	Rs. 9000/-
Annual Income	X 12
	Rs. 1,08,000/-
Less 1/4 th Personal Expenses	Rs. 27000/-
	Rs. 81,000/-
Future prospect (10%)	Rs. 8,100/-
	Rs. 89,100/-
Multiplier to be "11"	X 11
	Rs. 9,80,100/-
Non pecuniary damages	Rs. 84,000/-
	Rs. 10,64,100/-

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.13,91,115/- under OD challan No. 1719 dated 31.08.2022 and Rs. 25,000/- as

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

² (2009) 6 SC 121

statutory deposit through another cheque under challan No. 476 dated 10.08.2022.

10. The Respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 10,64,100/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
11. 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 dated Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Alipore, South 24-Parganas in M.A.C. Case No. 469/2019 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.
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.)

