

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.AT (MV) 457 of 2023

With

CAN 1 of 2024

Sahima Mondal & Ors.

-Vs-

The Oriental Insurance Co. & Anr.

With

COT 25 of 2024

The Oriental Insurance Co. & Anr.

-Vs-

Sahima Mondal & Ors.

For the Appellants : Mr. Muktokesh Das

For the Respondents/
Insurance Company : Mr. Sanjay Paul
Ms. Jaita Ghosh

Heard & Judgment on : 06.05.2025

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. The Learned Advocates representing the respective parties are present.

3. Four claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court-II, Krishnanagar, Nadia being MAC Case No. 75/2019, claiming an award of Rs. 19,34,000/- along with statutory cost and

interest from the date of filing the claim case whereby the aforesaid deceased expired due to a road traffic accident on 15.01.2019 between 8:00am to 8:30am. The offending vehicle being a truck bearing Registration No. WB-51/1481 hit the aforesaid deceased riding on his motorcycle in a rash and negligent manner and ran over his head. Consequently, the victim sustained grievous injuries was admitted in the District Hospital, Nadia at Krishnagar where he passed away. Subsequently, based on a complaint, Kotwali P.S. Case No. 28/2019 dated 16.01.2019 was instituted against the driver of the offending vehicle as aforesaid.

4. The owner of the offending vehicle appeared in this case but did not contest this case and was heard ex parte owner of the vehicle.
5. The respondent, the Oriental Insurance Company Ltd. and Others. contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.10,15,000/- as well as an interest of 6% from the date of filing the case.
7. The Learned Advocate representing the Appellants/claimants submitted as follows:-
 - a. It was erroneously held that the victim earned Rs 5,000/- per month as a mason. His income was Rs 500/- per day.
 - b. The multiplier was not properly fixed.
 - c. The compensation should have been fixed at Rs 19,34,000/-.

- d. The evidence of PW-2 had not been considered.
8. The learned Advocate representing the respondent No.1/insurance company submitted that the father of the victim should not be considered as the claimant who was not dependent on the income of the victim and 1/3rd should have been deducted towards personal expenditure. The learned Advocate representing the respondent No.1/insurance company further submitted that the compensation award passed by the learned Tribunal was justified.
9. Heard the submission of the learned advocates representing the respective parties.
10. Since the occurrence of the accident etc. and other ancillary issues are not disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restrict itself only to the points agitated by the Learned Advocates representing both the parties.
11. The learned Tribunal in the impugned judgment *inter alia* opined as follows:

“In order to prove the income of the deceased person, the petitioner side has brought the evidence of P.W.2 and produced one compute generated income certificate from the concerned B.D.O. In the cross examination, it has also been revealed that there is no provision to make any physical inquiry about the actual income of the concerned person before issuing the income certificate and neither may have any official employer and employee relationship with the said deceased person. In the circumstances, the Court has not other option but to rely upon the principle of notional income.

Since no document has been produced regarding the educational pursuits, vocation or income of the claimant/petitioner, this Court has to fall back on the doctrine of Notional Income and take into consideration the other prevalent parameters like the rocketing price index of essential commodities, the minimum wages that has to be paid even to an unskilled worker under the stature for the time being in force and the fact that the claimant/petitioner was healthy, fit and able bodied person. Taking account and note of all those factors, I am of the considered opinion that his

income may be reasonable computed at least at Rs. 5000/- per month. The age of the victim appears from the documents he was 38 years old at the time of accident and multiplier of 15 is applicable”.

12. The document marked as Ext. 6 and Ext.7 issued by the Block Development

Officer was beyond his jurisdiction and service norms. The victim was earning sum of Rs. 500 per day as mentioned in the claim application of MAC Case No. 75 of 2019. The Learned Advocate representing the appellants/claimants submitted that the victim worked as a ‘mason’ which was contrary to the statement of P.W.1 in her examination-in-chief as well as the claim application which stated that the victim worked under local contractor. The local contractor to have deployed the victim in whatever capacity did not appear before the Court to adduce evidence. The Block Development Officer Krishnanagar-I, Nadia vide memo No. 1789 dated 28.06.2022 authorized one Koushik Chatterjee P.D.O. & Sri Sunirmal Biswas, Sahayak attached with Krishnagar-I Block Development to appear before the learned Tribunal to represent him. Moreover, the certificate dated 16th day of October, 2020 was issued by the Block Development Officer, Krishnanagr-I Nadia certifying the annual income of the family to be 1,80,000/- such issuance of annual income by the Block Development Officer with regard to a private person who under no circumstances was attached to the Government office is deprecated and unlawful. The Block Development Officer had no right, jurisdiction or authority to issue such certificate of income in favour of any person or a family determining their monthly income to foist and/or fluster and frustrate the object and process of law. Copy of this order is to be circulated amongst by the District Magistrate through out of the State of West Bengal to issue circular and the notification that the Government Official had any rank has

no right to issue income certificate in favour of a private person not linked in any capacity in the Government Office.

13. 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. 10,15,000/- is modified as follows:

Monthly Income	Rs. 5 000/-
Annual Income	Rs. 60,000/-
Add : 40% future prospect	Rs. 24,000
	Rs. 84,000/-
Less : 1/3 rd personal expenses	Rs. 28,000/-

	Rs. 56,000/-
Multiplier to be 15	X 15

	Rs. 8,40,000/-
Add : General Damages	Rs. 77,000/-

	Rs. 9,17,000/-

14. The appellants/claimants has already received a sum of Rs. 10,15,000/- along with interest at the rate of 6% per annum from the date of filing of claim application till deposit before the learned Tribunal. Therefore, the respondent No.1/insurance company is at liberty to recover the balance amount of Rs. 98,000/- (Rs. 10,15,000 -9,17,000) along with interest at the rate of 6% per

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

annum from date of filing of the claim application till deposit before the learned Tribunal from the appellants/claimants in accordance with the law.

15. The instant appeal and cross objection are disposed of accordingly.
16. The pending applications if any stands disposed of.
17. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)