

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 329 of 2025

Pampa Rani Samanta & Ors.

v.

The United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy ... for the appellants/claimants.

Mr. Sanjay Paul

Ms. Jaita Ghosh ... for the respondent no.1/insurance company.

Heard on : March 04, 2025.

Judgment on : March 04, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been preferred against the impugned judgment and award dated 10th August, 2023 passed by the Learned Additional District Judge, Fast Track 1st Court and Tribunal Judge, Tamluk, District Purba Mednipur in MAC Case No.273 of 2020.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the appellants/claimants on account of the death of the victim in an accident, which occurred on 20th June, 2020 at about 05.20 p.m. on Kukrahat-Balughata Pitch Road at Chakalpur Bus Stand within the jurisdiction of P.S. J.L. No.63, Deulpota Anchal, Dist – Purba Medinipur with the involvement of the offending vehicle being a Maruti Swift Dezire bearing registration No.WB-29B/5376 which collided with the victim

standing alone with a motorcycle bearing registration No.WB-30AC/5880 at an exceeding speed rashly and negligently whereby the victim sustained injuries and succumbed to the same on his way to Haldia S.D. Hospital.

4. The Learned Advocate representing the appellants/claimants submitted that the learned Tribunal erroneously granted compensation assessing the monthly income of the deceased victim to be Rs.8,500/- on the basis of a Government Notification as follows:

Govt. of West Bengal, Office of the Labour Commissioner Memo No.36/2RW/35/94/LCS/JLC dated 08.06.20 effective from March 2020 to August 2020.

5. The Learned Advocate representing the appellants/claimants strenuously argued that the victim had been the owner of a garage for repairing the vehicles contrary to have been only a skilled worker. Moreover, the Learned Tribunal did not consider the evidence of PW3 along with the document marked as Exhibit 7 series, which clearly indicated that the deceased victim owned a repairing shop in the name and style of Bimal Auto Centre against which trade licence was issued by the Gram Panchayat from time to time. The Learned Tribunal should have considered the monthly income of the deceased victim to be Rs.15,000/- contrary to Rs.8,500/- per month.
6. The Learned Advocate representing the respondent no.1/insurance company submitted that the Learned Tribunal had rightly assessed the monthly income of the victim to be Rs.8,500/- since there was no oral or documentary evidence to prove that the deceased victim earned Rs.15,000/- per month. Moreover, the Learned Tribunal based on the evidence of PW 1 considered the deceased victim to be a skilled worker and

in view of the aforesaid Government Notification assessed the monthly income of the victim to be Rs.8,500/- per month. The Learned Advocate representing the respondent no.1/insurance company further submitted that the Learned Tribunal erroneously granted a sum of Rs.1,65,000/- towards general damages instead of Rs.77,000/-.

7. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been 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. The document marked as “Exhibit-7 series” indicated that the deceased victim was the proprietor of Bimal Auto Centre apparently to have been named after the deceased victim, which was granted for the purpose of trade and business, which was issued for the period of 2019 to 2020 to have been in effect till 31st March, 2020. The document marked as “Exhibit-7 series” indicated that the deceased victim was issued the trade licence to carry on his own business whereby establishing the fact that the deceased victim was the owner of proprietor of the repairing shop. Considering the fiscal index prevalent on the date of the accident in the year 2020, it would not have been improbable for the deceased victim to earn a sum of Rs.10,000/- per month.

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. 17,83,000/- is modified as follows:

Monthly Income	Rs. 10,000/-
Annual Income(Rs. 10,000 x 12)	Rs. 1,20,000/-
Future Prospect to be added(40%)	Rs. 48,000/-
1/3rd Deduction	Rs. 1,68,000/-
Personal Expenses	Rs. 56,000/-
Multiplier to be "17"	Rs. 1,12,000/-
	X 17
General Damages	Rs. 19,04,000/-
	Rs. 77,000/-
Less Award	Rs. 19,81,000/-
	Rs. 17,83,000/-
Entitlement	Rs. 1,98,000/-

9. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 17,83,000/-. The appellants/claimants are entitled to a sum of Rs. 1,98,000/- along with interest at the rate of 6% per annum to be paid from the date of filing of the claim application i.e. 17.08.2020 till the date of its actual realization.
10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 1,98,000/- 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 appellants/claimants as mentioned in the award passed by the Learned Additional District Judge, Fast Track 1st Court and Tribunal Judge, Tamluk, District Purba Mednipur in MAC Case No.273 of 2020 on proof of

² (2009) 6 SC 121

proper identification of the appellants/claimants 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.)

S.R./c.m. Ar. Ct.