

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1180 of 2024

**The New India Assurance Company Limited
Versus
Kajal Ghosh & Ors.**

For the Appellant : Mr. Sanjay Paul
Ms. Jaita Ghosh.

For the Respondent Nos. 1 to 3 : Mr. Amit Ranjan Roy.

Heard & Judgment on : 19th 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 05.07.2024 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, 1st Court, Asansol, Paschim Bardhaman in M.A.C. Case No. 30/2018 & 33/2018.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants due to the death of the victim in an accident which occurred on 16.05.2018 at about 2:30/3:00 P.M. with the involvement of the offending vehicle being a container vehicle bearing registration no. UP-21BN-4715 which approached towards Jubilee More and hit the victim standing near Rajpath More and on transmission to the Asansol District Hospital was declared 'brought dead'.
4. The Learned Advocate representing the appellant/Insurance Company submitted that the Learned Tribunal in absence of relevant documents to prove the avocation of the victim allotted Rs.15,000/- as monthly income. Moreover, with regard to the age of the victim to be 51 years 1/3rd instead of 1/4th had been deducted towards personal expenditure and 15% instead of 10% was granted towards 'future prospect'.
5. The Learned Advocate representing the respondent Nos. 1 to 3/claimants vehemently contradicted the submissions of the learned Advocate representing the appellant/Insurance Company with regard to the monthly income of the same submitting that the employer of the victim being P.W. 3 appeared before the Court and had filed a salary certificate endorsing that the victim was being paid Rs.15,000/- as monthly and the said document had been exhibited.

6. The Learned Advocate representing the respondent Nos. 1 to 3/claimants further relied on certain judgments of the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court and stated that the evidence of the employer authenticating the employment of the deceased victim was sacrosanct to prove the monthly income of the same disregarding any other aspect and, therefore, the Learned Tribunal had rightly considered the monthly income of the victim to be Rs. 15,000/- per month.
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 amount deducted towards personal expenditure and the future prospect granted to the victim with regard to his age. P.W. 3, the employer of the deceased victim appeared before the Court and submitted a salary certificate issued after the death of the victim denoting payment of Rs.12,500/- and an additional Rs. 2,500/- cumulatively Rs.15,000/- paid as salary to the victim per month. He further submitted that he did not maintain any salary register of his employees. Moreover, the contribution towards salary of ten of his employees had been mentioned in the income tax return. However, any document to that effect was not

produced before the Court and this statement in absence of the income tax return certificate is not acceptable. The employer being P.W. 3 did not produce an iota of document to evince the fact of granting Rs.15,000/- per month as salary to the deceased victim during the subsistence of his employment when he was alive and, therefore, there had been reasonable grounds to disbelieve the statement of the employer being P.W. 3 with regard to the payment of Rs.15,000/- as salary to the deceased victim. However, since the employer did prove that the deceased victim was his employee to have worked in his association for 4 to 5 years and at an age of 51 years the victim could have earned a sum of Rs.10,000/- per month and the same was not improbable.

8. Considering the observations of the Hon'ble Apex Court in *Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr*¹ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*² The impugned award of Rs. 17,07,750/- is modified as follows:

Monthly Income	Rs. 10,000/-
Annual Income	X 12
Future prospect (10%)	Rs. 1,20,000/-
	Rs. 12,000/-

Less 1/3 rd Personal Expenses	Rs. 1,32,000/-

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

² (2009) 6 SC 121

	Rs. 44,000/-
	Rs. 88,000/-
	Rs. 88,000/-
	sX 11
Multiplier to be "11"	Rs. 9,68,000/-
	Rs. 77,000/-
General damages	Rs. 10,45,000/-

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.22,68,116/- through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
10. The Respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 10,45,000/- along with interest 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 to the present respondent Nos. 1 to 3/claimants in equal proportion as mentioned in the impugned judgment passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, 1st Court, Asansol, Paschim Bardhaman in M.A.C. Case No. 30/2018 & 33/2018 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 interest generated on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which has been further deposited in the nationalized bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company through a cheque to be deposited at the office of the appellant/insurance company.
13. The instant appeal is disposed of accordingly.
14. The pending applications, if any, stands disposed of.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)