

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1357 of 2024

**Cholamandalam MS General Insurance Co. Ltd.
Versus
Rupa Kumar Das & Ors.**

For the Appellant/Insurance co. : Mr. Rajesh Singh

For the Respondent Nos. 1 to 5/claimants : Mr. Saidur Rahaman

Heard on & Judgment on : 3rd 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 learned Judge, Motor Accident Claims Tribunal cum Fast Track, 1st Court, Islampur, Uttar Dinajpur in MAC Case No. 142 of 2022.
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 04.05.2022 at about

11.30 a.m. at N.H.31 near Kalagachh Petrol Pump within the jurisdiction of Chopra Police Station in the District of Uttar Dinajpur with the involvement of the offending vehicle being a motor cycle bearing No. BR-37-X/9475 which was proceeding at an excessive speed in rashly and negligently hit the victim who had been working on the footpath resulting in his fall. He sustained severe injuries and was taken to Dalua BPHC, Chopra for treatment wherefrom he was referred to N.B.M.C. hospital, Siliguri. However, he ultimately succumbed to his injuries at Neotia Getwel Healthcare Centre, Siliguri on 06.05.2022.

4. Learned Advocate representing the appellant/insurance company submitted that the learned Tribunal had erroneously granted parental consortium and filial consortium to the extent of Rs. 2,42,000/- instead of a composite sum of Rs. 84,000/- to have been awarded against general damages. The learned Advocate representing the appellant/insurance company further submitted that the interest to the extent of 7.5% had been exorbitant. More-over, the claim of the deceased victim to have been a seasonal business man was not proved either through oral or documentary evidence to have earned a sum of Rs. 8500/-. The learned Tribunal considered his income to be Rs.

7375/- based on a notification issued by the office of the Labour Commissioner Government of West Bengal.

5. The Learned Advocate representing the respondent Nos.1 to 5/claimants submitted that the deceased victim was engaged in purchase and sale seasonal crops and used to earn Rs. 8500/- per month which could not have been equated with minimum wages granted under the aforesaid notification.
6. 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 appellant/insurance company, this Court restricts itself only to the extent of issues raised by the learned Advocates representing both the parties. The respondent Nos. 1 to 5/claimants could not cite corroborative evidence with regard to the avocation of the victim as well as earnings of the same despite the deposition of the wife of the victim being P.W.1 who claimed the victim to have been earned sum of Rs. 8500/- per month which could not have been proved through documentary evidence. Considering the fiscal index of the year 2022 and the fact that the victim used to be engaged in his avocation based on season the sum of Rs. 7,000/- to have been earned by him

on an average of 12 months might not be improbable, so that his yearly income would be Rs. 84000/-.

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. 16,72,175/- is modified as follows:

Monthly Income	Rs. 7000/-
Annual Income	Rs. 84,000/-
Deduction towards personal & Living expenses 1/3 rd	Rs. 28,000/-
	Rs. 56,000/-
Future Prospect to be added(40%)	Rs. 22,400/-
	Rs. 78,400/-
	X 15
Multiplier to be "15"	Rs. 11,76,000/-
General damages	Rs. 84,000/-
Entitlement	Rs. 12,60,000/-

8. The respondent Nos.1 to 5/claimants are entitled to a sum of Rs. 12,60,000/- along with 6% interest per annum to be paid from the date of filing of the claim application till the date of its realization.
9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of 19,06,646/- along with an interest from the date of filing of the claim application as per the challan filed by the Learned advocate for the Appellant/Insurance company.

10. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present respondent Nos.1 to 5/claimants as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum Fast Track, 1st Court, Islampur, Uttar Dinajpur in MAC Case No. 142 of 2022 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees and refund the differential amount if any through a cheque to the learned advocate for the insurance company for the accounts of the insurance company.
11. 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.
12. The instant appeal is disposed of accordingly.
13. The interim order if any stand vacated.
14. The pending applications if any stands disposed of.

² (2009) 6 SC 121

15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. AR. Ct.