

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 957 of 2021

Himendu Das & Ors.

Versus

I.C.I.C.I. Lombard General Insurance Company Ltd. & Anr.

For the Appellant : Mr. Jayanta Mondal,
Mr. Sayantan Rakshit.

For the Respondent No.1/
Insurance co. : Mr. Parimal Pahari

Heard & Judgment on : 16th January, 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 8th June, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, FTC-II, Tamluk in M.A.C. Case No. 160 of 2014.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants concerning an accident which occurred on 6th November, 2012 at about 6.00 a.m. at Darua Bhabanimore pitch road under Contai police station, with the involvement of

the offending vehicle being motor cycle bearing registration No. WB 32C/7708 whereby the victim was hit on his way near the gate of Contai Polytechnic College Raghurampur by the aforesaid offending vehicle which approached at an exceeding speed rashly and negligently. The victim ultimately succumbed to his injuries on 11.11.2012.

4. The Learned Tribunal pronounced the impugned judgment and order after assessing the oral as well as documentary evidence and disposing of the issues framed.
5. Learned Advocate representing the appellants/claimants submitted that the learned Tribunal failed to consider the monthly income of the victim to be Rs.2,000/- per month as a notional income which had been considered to be Rs. 2,000/- per month in accordance with the prevailing price index.
6. The learned Advocate representing the respondent No.1/Insurance Company submitted in absence of any relevant documents to substantiate the monthly income of the victim, the Learned Tribunal was justified in granting a sum of Rs. 2000/- as monthly income.
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. Considering the fiscal index in the year 2012 and also the directions of the Hon'ble Supreme Court in various decisions the notional income of Rs. 3000/- is to be considered as the monthly income for computation of the compensation to be awarded in favour of the appellants/claimants.

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. 1,23,561/- is modified as follows:

Monthly Income	Rs. 3000/-
Annual Income	Rs. 36,000/-
1/3 rd Deduction	Rs. 12,000/-
Personal Expenses	Rs. 24,000/-
	Rs. 24,000/-
Multiplier to be "5"	X 5
	Rs. 1,20,000/-
Conventional Head	
Loss of Estate – 15,000/-	Rs. 30,000/-
Funeral Exp. – 15,000/-	Rs. 1,50,000/-
	Rs. 43,561/-
Rs. 30,000	
Medical Expenditure	Rs. 1,93,561/-
	Rs. 1,93,561/-
Less Award	Rs. 1,23,561/-
Entitlement	Rs. 70,000/-

9. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 1,23,561/-. The appellants/claimants are entitled to a sum of Rs. 70,000/-

along with 6% interest per annum to be paid from the date of filing of the claim application 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. 70,000/- along with 6 % per cent interest per annum from the date of filing of the claim application 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 in equal proportion as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, FTC-II, Tamluk in M.A.C. Case No. 160 of 2014 on proof of 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.)

c.m.

² (2009) 6 SC 121