

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1397 of 2024

**The Oriental Insurance Company Limited
Versus
Smt. Madhabi Ghosh & Ors.**

With

COT/34/2025

**Smt. Madhabi Ghosh & Ors.
-Vs.-
The Oriental Insurance Company Limited & Anr.**

For the Appellant : Mr. Rajdeep Bhattacharya

For the Respondent No.1 to 3 : Mr. Ashique Mondal.

Heard & Judgment on : 20th March, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 to 3/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 31.07.2024 passed by the Learned Judge, Motor

Accident Claims Tribunal cum 11th Bench, City Civil Court, Calcutta in M.A.C. Case No. 153 of 2017.

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 2nd October, 2016 at about 19.05 hours in front of 20, A.J.C. Bose Road, Kolkata 700017 with the involvement of the offending vehicle being a private bus bearing registration No. WB-04-G-4650 which at an exceeding speed rashly and negligently tried to overtake another bus bearing registration No. WB-23-D-4182 dashed the victim being a pedestrian on the road being seriously injured and was removed to Calcutta National Medical Collage and Hospital where he was declared 'brought dead" by the doctors.
4. The learned Advocate representing the appellant/Insurance Company submitted that the liability cast only upon the appellant/insurance company disregarding the other offending vehicle being a bus with a head on collusion. More-over, the income of the victim had been stated to be Rs. 7294/- on the basis of the document marked as Ext.6 though the author of the said exhibit as well as the employer of the victim did not appear to adduce before the Court with regard to the veracity of the content of the document marked as Ext. 6 and sought for

reduction in the assessment of monthly income of the victim considering the aspect of notional income. However, the driving licence of the driver of the offending vehicle was found to be fake and the appellant/insurance company was given liberty to recover the amount of compensation to be paid to the claimants/respondents, from the owner of the offending vehicle.

5. The Learned Advocate representing the respondent No.1 to 3/claimants submitted that the Learned Tribunal justifiably considered the document marked as Ext.6 and granted the monthly income of the victim to the extent of Rs. 7294/- which otherwise should have been Rs. 8437/- as assessed in the notification No. 12-MW/2W-32/13 dated 29.02.2016 issued by the West Bengal Labour Department in the context of a person working as a "Sweet Maker". More-over, the Learned Tribunal did not grant loss of estate to the extent of Rs. 15,000/- and the rate of interest of 20% increased in accordance with the observation Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr¹.
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 respondent No.1/insurance company, this Court restricts itself

¹ **1 2017(4)TAC 673(S.C)**

only to the extent agitated by the Learned Advocate representing the appellant/insurance company after disposing of the issues framed, the Learned Tribunal considered the appellant/insurance company in the instant appeal to have been liable for paying the compensation to the extent of Rs. 6,32,683/- along with interest at the rate of 6% per annum from the date of filing of the claim application till the date of its realization. The documents on record as well as deposition of the prosecution witnesses did not entail the involvement of the other vehicle to have been imputed with the liability to grant compensation and this Court is not inclined to interfere with the same. The Learned Tribunal had already granted the right to recover the paid sum from the owner of the offending vehicle and this Court is not inclined to interfere with the same. However, since there has been a document marked as Ext. 6 and there is not contrary evidence to contradict the same, this Court considered Tribunal has been considering the monthly income of the victim to be Rs. 7294/-

7. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr² and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.³ The impugned award of Rs. 6,32,683/- is modified as follows:

² **1 2017(4)TAC 673(S.C)**

³ (2009) 6 SC 121

Monthly Income	Rs. 7294/-
Annual Income(7294x 12)	Rs. 87,528/-
Personal Expenses (1/3)	Rs. 29,176/-
	Rs. 58,352/-
Future Prospect to be added(10%)	Rs. 5,835/-
	Rs. 65,187/-
	x 9
Multiplier to be “9”	Rs. 5,86,683/-
Non-Pecuniary Damages	Rs. 84,000/-
Entitlement	Rs. 6,70,683/-

8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 9,14,842/=(Rs. 25,000 + 8,89,842) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

9. The Respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 6,70,683/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 23nd February, 2017 till the date of actual realization.

10. 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 respondent Nos. 1 /claimants as mentioned by Learned Judge, Motor Accident Claims Tribunal cum 11th Bench, City Civil Court, Calcutta 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.

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 and cross objection are disposed of accordingly.

13. The interim order if any stand vacated.

14. The TCR be sent down to the concerned tribunal forthwith.

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. A.R.