

Form No. J(2)

District: Uttar Dinajpur

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 792 of 2021

NATIONAL INSURANCE CO. LTD

VS.

AKLEMA BIBI & ORS.

With

COT 117 OF 2018

NATIONAL INSURANCE CO. LTD

VS.

SMT AKLEMA BIBI & ORS

Mr. Parimal Kumar Pahari

... for the appellant/Insurance Company

Mr. Sujit Saha

... for the respondents/claimants

Heard on Judgment on : 28.07.2025

Ananya Bandyopadhyay J.

1. The Learned Advocates representing the appellant/insurance company as well as respondents/claimants are present.
2. The instant appeal had been filed against judgment and order dated 17th November, 2016 passed by the learned Judge cum Motor Accident Claims Tribunal cum Additional District & Sessions Judge, F.T.C. Raiganj in M.A.C. Case No. 105 of 2013 under Section 166 of the Motor Vehicles Act.

3. An application under Section 166 of the Motor Vehicle Act, had been filed by the claimants on account of death of the victim in an accident which occurred on 04.07.2013 at about 10:00 hours on NH-34 Road at Shyamapally Itahar within the jurisdiction of Itahar Police Station with the involvement of the offending vehicle being Truck bearing No.WB-03/T.C.-0074 which proceeding at an excessive speed rashly and negligently hit the victim who had a pedestrian and evidently run over him who was initially referred to Raiganj Hospital and thereafter subsequently expired at SSKM Hospital.

4. The Learned Advocate representing the appellant Insurance Company submitted that the Insurance Company was not liable to pay the compensation amount since there had been a violation of the terms of the Insurance Policy. Moreover, the claimants failed to prove the monthly income of the victim to be Rs.9,000/- per month working as a mason.

5. The Learned Advocate representing the respondents/claimants submitted to have filed a cross objection being COT 117 of 2018 wherein it had been stated that the learned tribunal did not grant any compensation towards the component of future prospect.

6. Considered the submissions of the learned Advocates representing both the parties.

7. Since, the occurrence of the accident, involvement of the offending vehicle, etc. are not disputed by the learned advocate representing the appellant/insurance company,

8. The learned advocate representing the appellant/Insurance Company for the first time raised the issue of violation of the Insurance Policy which was not agitated before the learned tribunal and this court is not inclined to entertain the same. Moreover, as far as the income of Mason is concerned that could not have been possibly proved through any documentary evidence. However, considering the fiscal index prevalent in the year 2013 the monthly income of the deceased victim can be considered to Rs.6,000/- per month instead of Rs.9,000/- which appears to be improbable.

9. Considering the observations of the Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 6,53,796/- is modified as follows:

Monthly Income	Rs. 6000/-
Annual Income	X 12
	Rs. 72,000/-
Future prospect (10%)	Rs. 7200/-
	Rs. 79,200/-
Less 1/4th Personal Expenses	Rs. 19,800/-
	Rs. 59,400/-
Multiplier to be "9"	X 9
	Rs. 5,34,600/-
General Damages	Rs. 84,000/-
	Rs.6,18,600/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

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10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 8,91,672/=(Rs. 25,000 + 8,66,672) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

11. The Respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 6,18,600/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

12. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest directly to the bank accounts of the present respondent Nos. 1 to 4/claimants in equal proportion as mentioned in the impugned judgment and order passed by the learned Judge cum Motor Accident Claims Tribunal cum Additional District & Sessions Judge, F.T.C. Raiganj in M.A.C. Case No. 105 of 2013 under Section 166 of the Motor Vehicles Act 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. The office of the learned Registrar General, High Court at Calcutta will instruct

the claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

13. The instant appeal and cross objection are 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.)**