

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 402 of 2023
CAN 1 of 2023
National Insurance Co. Ltd.
Versus
Dilip Mitra & Ors.
With
COT 80 of 2023
Dilip Mitra & Ors.
Vs.
National Insurance Co. Ltd. & Anr.**

For the Appellant : Mr. Guddu Singh

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

Heard & Judgment on : 17th July, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been filed against the judgment and award dated 9th January, 2023 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 5th Court, Alipore, South 24 Parganas in M.A.C. Case No. 24 of 2018.

3. An application under Section 166 of the Motor Vehicles Act filed by the claimants on account of the death of the victim in an accident which occurred on 1st April, 2017 at the crossing of R.B. Avenue Sarat Bose Road in front of Rash Behari Avenue at about 8.15 p.m. with the involvement of the offending vehicle being a Bus bearing registration No. WB-19G-3076 which approached at an exceeding speed rashly and negligently hit the victim who was thereafter admitted at R.K. Mission Seva Pratisthan. Subsequently, he was shifted to SSKM Hospital sustaining fracture injuries and evidently succumbed to the same on 01.06.2017.
4. Learned Advocate representing the appellant/insurance company submitted that the learned Magistrate had asked the Investigating Officer to incorporate Section 304A of the Indian Penal Code in the charge-sheet. However, after re-investigation the investigating agency filled the charge-sheet without adding Section 304A of the Indian Penal Code whereby it can be said that the victim had not died out of an accident. More-over, the learned Tribunal erroneously considered the multiplier to be "13" instead of "11" with regard to the age of the victim to have been 51 years. The element of future prospect was considered to the extent of 15% instead of 10% also been incorrect. The parental

consortium to the extent of 88,000/- was erroneous. It was further submitted that the interest granted by the learned tribunal at the rate of 7% per annum had been excessive.

5. The Learned Advocate representing the respondent Nos. 1 to 3/claimants submitted to have filed a cross objection claiming an enhancement in the monthly income of the victim to be Rs. 9000/- instead of Rs. 6000/- as assessed by the learned tribunal.
6. Considered the rival contentions of the Learned Advocates representing the respective parties.
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 consider the point agitated by both the parties. The charge-sheet revealed the occurrence of the accident whereby the victim had expired. Whether Section 304A of the Indian Penal Code had been added or not with regard to the intent of the driver of the offending vehicle was not directly connected with the death of the victim in the accident. Considering the age of the victim at the relevant point of time the multiplier should have been assessed as "11" instead of "13" and the component of future prospect should have been considered to the extent of

10% instead of 15%. More-over, Rs. 88,000/- granted towards parental consortium was excessive. Since the claimants failed to substantiate the monthly income of the victim to be Rs. 9000/- the learned tribunal had reasonably decided the same to be Rs. 6000/- per month.

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. 9,05,300/- is modified as follows:

Monthly Income	Rs. 6000/-
Annual Income (Rs. 6000 x 12)	Rs. 72,000/-
Less 1/3 rd Deduction	Rs. 24,000/-
Personal Expenses	Rs. 48,000/-
Future Prospect (10%)	Rs. 4,800/-
Multiplier to be " 11"	Rs. 52,800/-
	X 11
Non Pecuniary Damages	Rs. 5,80,800/-
Add Medical Expenses	Rs. 84,000/-
	Rs. 22,720/-
Entitlement	Rs. 6,87,520/-

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 12,13,994/=(Rs. 25,000 + 11,88,994) through two separate

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

² (2009) 6 SC 121

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. 6,87,520/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 09.07.2016 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 with accrued interest directly to the bank accounts of the respondent Nos. 1 to 3/claimants as mentioned by learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 5th Court, Alipore, South 24 Parganas in M.A.C. Case No. 24 of 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 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.

12. The instant appeal and cross objection are disposed of accordingly.
13. The pending application, if any, stands disposed of.
14. The interim order if any stand vacated.
15. The TCR be sent down to the concerned tribunal forthwith.
16. 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.