

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 923 of 2023

**National Insurance Company Limited
Versus
Sangita Jana & Anr.**

With

COT/102/2023

**Sangita Jana
-Vs.-
National Insurance Company Limited & Anr.**

For the Appellant	:	Mr. Rajesh Singh
For the Respondent No.1 to 4	:	Mr. Jayanta Kumar Mondal Mr. Sayantan Rakshit
Heard & Judgment on	:	14 th August, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 /claimant are present in Court.
2. The instant appeal had been filed against the judgment and award dated 15th May, 2023 passed by Learned Judge, Motor Accident

Claims Tribunal cum Additional District Judge, FTC-I, Contai, Purba Medinipur in M.A.C. Case No. 125 of 2019.

3. An application under Section 166 of the Motor Vehicles Act had been filed by claimant on account of the injury sustained by the husband of the claimant in an accident which occurred on December 30, 2017 at 23:15 hours on the Contai-Digha pitch road near Ramnagar Bazaar with the involvement of the offending vehicle being a Maruti Alto wherein the Registration No.WB32H-0903 was proceeding at an excessive speed, rashly and negligently collided with the victim along with the others. The victim suffered injuries and had to be hospitalized and subsequently operated.
4. The Learned Advocate representing the appellant/insurance company submitted in view of the medical documents exhibited before the Learned Tribunal, it appeared that the victim, after his treatment, was performing normal functions in life and did not suffer any financial loss. The disability to the extent of 50% assessed by the Medical Board had been excessive and the Learned Tribunal was not justified in considering the physical disablement to the extent of 50% discarding the functional disability of the victim as well as the loss of future income not to have incurred by the victim. It was further submitted that the victim was 41 years of age and accordingly the Learned Tribunal should have considered the multiplier of 14 instead of 15. It was, however, submitted that

the Learned Tribunal had granted the interest @ 8% which was excessive.

5. The Learned Advocate representing the respondent No.1/claimant submitted to have filed a cross-examination being COT 102/2023, *inter alia*, the claiming that the last Income Tax Return filed by the claimant in support of the annual income of the victim pursuing his career as a contractor had not been considered by the Learned Tribunal nor the aspect of the future prospect was considered by the same.
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 agitated by the learned Advocates representing the respective parties.
7. The document marked as Exhibit-40 being the certificate of disability issued by Contai Sub-Divisional Hospital assessed the disability to the extent of 50% due to post-operative stiffness of right knee and left shoulder. The disability certificate as aforesaid did not specifically mention as to whether the 50% disability referred to a permanent disability or a partial disability. However, the medical documents marked as exhibit 13 series indicated the opinion of a doctor Chandrasekhar Dhar at C.K. Birla Hospital/CMRI Hospital

dated February 24, 2018 which instructed the victim to “*work as normal as possible*” on his follow-up visit. It further stated mild swelling to have been detected. The evidence of PW-1 in cross-examination stated “*my husband can talk now and can also write*”. A conjoint reading of the aforesaid statement of PW-1 as well as the documents marked as exhibit 13 collectively referred to opinion of the doctor of the concerned hospital who had treated the victim indubitably established that the victim would perceive through all his senses as also been able to walk, able to write and speak. Accordingly, the extent of disability assessed to be 50% had been on the excessive. The physical disability suffered by the victim under the facts and circumstances of the instant case could not have precluded him to pursue his career as a contractor. In view of the documents marked as Exhibit-9 series i.e. Income Tax Return, the annual income of the victim had been mentioned as Rs.4,50,327/- which should have been considered by the Learned Tribunal in assessing the compensation. The Tribunal should also have granted compensation with regard to the element of future prospect, pain and suffering. The impugned judgment and order passed by the Learned Tribunal with regard to the assessment of compensation is modified to the following extent:

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. 30,08,728/- is modified as follows:

Monthly Income	Rs. 45,94,39/-
Less Tax	Rs. 9,112/-
	<u>Rs. 4,50,327/-</u>
Disability 50% & Corresponding to 12½ financial disability	Rs. 56,291/-
	Rs. 14,073/-
	<u>Rs. 70,364/-</u>
Future prospect 25%	X 14
	<u>Rs. 9,85,096/-</u>
Medical Expenses	Rs. 3,08,728/-
	<u>Rs. 12,93,824/-</u>
Non Pecuniary Damages	Rs. 1,00,000/-
	<u>Rs. 13,93,824/-</u>
Entitlement	Rs. 13,93,824/-

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 39,57,551/=(Rs. 25,000 + 39,32,551) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
10. The Learned Advocate representing the respondent Nos. 1/claimant is entitled to receive the amount of Rs. 13,93,824/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

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

² (2009) 6 SC 121

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 account of the present respondent Nos. 1 /claimant as mentioned by Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, FTC-I, Contai, Purba Medinipur in M.A.C. Case No. 125 of 2019 on proof of proper identification of the respondent No.1/claimant subject to payment of ad valorem Court fees within four weeks 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. The office of the learned Registrar General, High Court at Calcutta will instruct the claimant to provide detail of his bank account 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.)

