

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 263 of 2024

Putul Karmakar & Anr.

-Vs-

The New India Assurance Co. Ltd. & Anr.

For the Appellants : Mr. Laltu Mohan Ghosh

For the Respondents/
Insurance Company : Mr. Parimal Kr. Pahari.

Heard & Judgment on :02.05.2025

Ananya Bandyopadhyay, J.:-

1. The Learned Advocates representing the respective parties are present.
2. Two claimants in respect of the deceased of the accident filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, 4th Court, Behrampore, Murshidabad being MAC Case No. 127 of 2009 claiming an award of Rs. 19,84,814/- due to a road traffic accident on 16.01.2009 around 22:45 hours.
3. The offending vehicle, bearing Registration No. WB-57/3923 hit the aforesaid victim rashly and negligently when it was driving on a pucca road without blowing any horn and violating the traffic signals.
4. Consequently, the victim received grievous injuries and was transferred to Behrampore New General Hospital where he succumbed to his injuries on 17.01.2009.

5. Subsequently, based on a complaint, Behrampore P.S. Case No. 29/2009 dated 17.01.2009 under Sections 279/304-A of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.
6. The owner of the vehicle did not appear and the MAC case was allowed ex-parte against the owner of the vehicle.
7. The respondent, The New India Assurance Co. Ltd. contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded claimant No. 2 an amount of Rs.7,78,830/-, and the claimant No. 1 an amount of Rs.7,83,830 (excluding the cost of litigation amounting to Rs.5,000/-), as compensation along with an interest payable at 9%. The amount was to be calculated from the date of filing of this case i.e. 19.03.2009.
9. The Learned Advocate representing the appellant submitted it was erroneous to consider the net income of the victim as Rs. 12,943/- per month instead of his gross income of Rs. 16,093/- of the victim, at the relevant time of accident as per Exhibit 8, submitted by his employer as P.W 4, of the victim. As per Exhibit 8, as well as evidence of P. W. 4, the employer of the victim who deposed in this case, the gross salary of the victim was proved to be Rs. 16,093/- for the month of January 2009 at the time of accident. The monthly gross salary of the victim ought to have been considered as Rs. 16,093/- per month as he was a driver of Superintendent of Police, Murshidabad. The decision of Hon'ble Apex Court of India, to be considered are **2006 (1) T.A.C. 1, Managing Director, Tamil Nadu State Road Transport Corporation Ltd.-Vs- K.S. Bindu and ors., WBLR 2016 (1). Col-700 Pramila Audhikari & ors - National**

Insurance G.L.D. and ans and Sri. K... Madhusudan and ors Vs The Administrative Officers and another reported in W.B.L.R. 2011 (2) page no. 705. As per the dictum of the Apex Court of India, loss of future prospect should be assessed at 30% for the age group 40 to 50 years and considering the salary of the victim. In this case the victim aged about 44 years and gross Salary was of Rs. 16,093/- per month, at the material time of accidental death of the permanent employee of Superintendent of Police, Murshidabad, Government of West Bengal. The Learned Tribunal below ought to have considered the loss of future prospective income of the victim to the extent of 30% on Gross Salary guided by the Hon'ble Apex Court of India, in the appeal of ***Smt. Sarala Verma and ors Vs Delhi Transport Corporation and ors. in 2009 (2) T.A.C. 677 (S.C) and reported in 2017 (6) W.B.L.R. 308 (S.C) in the appeal of National Insurance Co. Ltd. Vs Praney Sethi and ors.*** The Learned Tribunal below erred in law by assessing the awarded loss of estate of Rs. 2,500/-, Funeral Expenses of 2,000/- and Loss of consortium of Rs. 5,000/- in favour of the claimants in the Motor Accident Claim Case. The loss of estate ought to have been fixed at Rs. 15,000/-, Funeral Expenses at 15,000/- and Loss of consortium at Rs. 40,000/- in favour of the claimants in the Motor Accident Claim Case guided by the Hon'ble Apex Court of India, reported in 2017 (6) W.B.L.R. 308 (S.C). National Insurance Co. Ltd. Vs Praney Sethi.

10. The Learned Advocate representing the respondents/claimants submitted that the learned tribunal was justified in passing the impugned order and judgment. However, erroneously computed the multiplier to be 15 instead of 14 considering the age of the victim.

11. Considered the rival submissions of the Learned Advocates representing the respective parties.
12. Since the occurrence of the accident 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 points agitated by the Learned Advocate representing the appellant/claimant as well as respondent No. 1/Insurance Company. The document marked as Ext. 8 based on the evidence adduced by P.W.4, the Reserve Officer, revealed the gross salary received by the victim to be Rs.16,093 from which the amount of Rs.130 should have been deducted on account of professional tax. Moreover, the element of 'future prospect' should have been assessed to the extent of 30% considering the age of the victim to 44 years on the date of the accident, whereby, the multiplier had to be considered to be 14. The account of general damages should also be modified.
13. In view of the above observation of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr.***¹ and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***² the impugned award of Rs.19,84,814/- is modified as follows:-

Monthly Income		Rs.15963/-
Annual Income		Rs. 1,91,556/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Future Prospect (30%)		Rs. 57,466.80/-
Total Income		Rs. 2,49,022.80/-
Deduction 1/3 rd		Rs. 1,66,014.67/-
Multiplier 14		Rs.23,24,196.00/-
General Damages		Rs.77,000/-
		Rs.24,01,196/-
Less award received		Rs.19,84,814/-
Total		Rs.4,16,382/-

14. The Learned Advocate representing the appellants/claimants submitted that the appellants/claimants has already received the amount of Rs.19,84,814/- . The appellants/claimants are entitled to a sum of Rs.4,16,382/- along with an interest at rate of 6% per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

15. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs.4,16,382/-along with an interest at rate of 6% 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.
16. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court Berhampore, Murshidabad in MACC Case No. 127 of 2009 on proof of proper identification of the appellants/claimant subject to payment of ad valorem Court's fees.
17. The instant appeal is disposed of accordingly.
18. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
19. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)