In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1375 of 2022
With
CAN 1 of 2023

National Insurance Co. Ltd.
v.
Minu Rani Das & Ors.

Mr. Rajesh Singh ... for the appellant/insurance company.

Ms. Ankana Sarkar ... for the respondents/claimants.

Heard on: February 06, 2025.

Judgment on: February 06, 2025.

Ananya Bandyopadhyay, J:- The learned advocates representing the respective parties are present.

The instant appeal had been preferred against the impugned judgment and award dated 29th July, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur & Additional District & Sessions Judge, Fast Track 3rd Court, Sadar, Paschim Medinipur in MAC Case No.397 of 2016.

An application under Section 166 of the Motor Vehicles Act, had been filed on account of the death of the victim in an accident, which occurred on 5th June, 2016 at about 10:30 a.m. with the involvement of an offending vehicle, being a Motorcycle, bearing Registration Number WB-32F/5923, which approached at an exceeding speed, rashly and negligently, injured the victim when he was standing near a Bus Stand at Baharda. The injured victim was shifted to Egra SD Hospital wherein he was declared as ***"brought dead"***.

The Learned Advocate representing the appellant/insurance company submitted that the respondent Nos. 1 to 3/claimants could not prove that the victim worked at a saw mill earning Rs.6,000/- per month. Neither the owner of the saw mill to have employed the victim as the worker or any other witnesses privy to the avocation of the victim as a saw mill worker appeared before the Court. Therefore, the Learned Tribunal instead of granting Rs.6,000/- to be the monthly income of the victim should have assessed the notional income of the victim to the tune of Rs.5,000/- per month. Moreover, the Learned Tribunal erroneously granted the compensation towards loss of parental consortium as well as loss of filial consortium which should not have been granted since the victim being a married person, the loss of consortium in view of the above context should not have been granted.

The Learned Advocate representing the respondents/claimants conceded to the fact that the amounts of compensation awarded towards loss of parental consortium as well as filial consortium should not have been granted. However, refuted the contention of the learned advocate representing the appellant/insurance company in terms of the monthly income of the victim to be Rs.6,000/- per month, which according to him had been rightly assessed by the learned Tribunal.

Since the occurrence of the accident, the involvement of the offending vehicle, the issuance of the insurance policy, the driving licence, the route permit etc. have not been disputed by the Learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of considering the monthly income of the victim as well as the erroneous calculation with regard to the loss of parental consortium as well as loss of filial consortium. Evidently, the respondent Nos. 1 to 3/claimants failed to prove the source of income of the victim, a person working at a saw mill need not be in a position to provide documentary evidence. However, considering the physical index prevalent to other relevant time, the monthly income of the victim in absence of oral as well as documentary evidence can be considered to be Rs.5,000/- per month as a notional income. The Learned Tribunal has been incorrectly in granting the amount of compensation towards loss of parental consortium as well as loss of filial consortium and the same should be deleted from the amount of compensation.

Considering the observations of the Hon'ble Apex Court Pranay in *National insurance company Ltd. Vs. Pranay Shetty & Anr*[1] *and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*[2]*,* the impugned award of Rs. 10,05,000/- is modified as follows:

Income	Rs. 5000/- Rs. 1250/-
Future Prospect added (25%)	Rs. 6,250/- X 12
Annual Income	Rs. 75,000/- Rs. 25,000
1/3rd Personal Expenses Multiplier to be "14"	Rs. 50,000/- X 14
	Rs. 7,00,000/-
General Damages	Rs. 70,000/-
	Rs. 7,84,000/-

It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company has deposited the entire awarded amount with interest of 6 % per annum from the date of filing of the claim application i.e. 13,94,710/- as per the challan filed by the learned advocate for the Appellant/Insurance company.

The respondent No.1 to 3/claimants is entitled to receive the balance amount of Rs. 7,84,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The office of the Registrar General, High Court at Calcutta is to calculate the award passed by this Court today together with interest as aforesaid and thereafter disburse the same to the present respondent Nos.1 to 3/claimants as mentioned in the impugned judgment 29th July, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur & Additional District & Sessions Judge, Fast Track 3rd Court, Sadar, Paschim Medinipur in MAC

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

Case No.397 of 2016 on proof of proper identification of the respondent Nos.1 to 3/claimants subject to payment of ad valorem Court fees and refund the differential amount through a cheque to the learned advocate for the insurance company for the accounts of the insurance company.

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.

The instant appeal and connected application are disposed of accordingly.

The interim order if any stand vacated.

The TCR be sent down to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

S.R./c.m. ***(Ananya Bandyopadhyay, J.)***

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[2] (2009) 6 SC 121