bm Form No. J(2)

**District: Calcutta**

# IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction**

**<u>Appellate Side</u>**

**Present :**

**The Hon'ble Justice Ananya Bandyopadhyay**

**FMA 1297 of 2024**

**NATIONAL INSURANCE COMPANY LTD.**
**VS.**
**SWAPAN CHANDA & ANR.**

**WITH**
**SWAPAN CHANDA & ANR.**
**VS.**
**NATIONAL INSURANCE COMPANY LTD. & ANR.**

Mr. Rajesh Singh ... for the appellant/ Insurance Company

Mr. Ashique Mondal ... for the respondents/ claimants

Heard on : 30.07.2025

Judgment on : 30.07.2025

**<u>Ananya Bandyopadhyay J.</u>**

1. The Learned Advocates representing both the parties are present in court.

2. The instant appeal had been filed against the judgment and order dated 28.07.2024 passed by the Learned Judge, Motor Accident Claims Tribunal cum Court of the Judge, Bench No. IX, City Civil Court at Calcutta in MAC Case No.382 of 2015.

3. An application under Section 166 of the Motor Vehicle Act, had been filed by the claimant on account of death of the victim in an accident which occurred on 18.06.2015 at about 22.30 PM at the crossing of AJC Bose Road and D.L. Khan Road in front of KMC PL-2, Kolkata with the involvement of the vehicle being a Trailer bearing registration No.WB-25D/7084 which approaching at an exceeding speed rashly and negligently, collided with the one Motor Cycle wherein the victim had been a pillion rider who incidentally got injured and was admitted at SSKM Hospital wherein she was declared to have expired.

4. The Learned Advocate representing the appellant/Insurance Company submitted to have filed the instant appeal on the ground that the Learned Tribunal had erroneously considered the yearly income of the victim to be Rs.8,73,613/- on the basis of one month salary slip which reflected her monthly income to be Rs.74,880/- which was marked as “Exhibit-13”.

5. The Learned Advocate representing the respondent/claimants had filed a cross objection being COT 148 of 2024 being aggrieved by the compensation to the extent of Rs.30,000/- on account of non-pecuniary damages which should have been Rs.36,000/-.

6. At the stage of hearing on 10th March, 2025, the Learned Advocate representing the appellant Insurance Company agitated the point based on the salary slip of a single month the entire year income was taken into account by the Learned Tribunal which had been incorrect. Accordingly, this Court directed the Learned

Tribunal to adduce evidence of a competent person of the Income Tax Department to endorse the document of Income Tax Return filed prior to the death of the victim in the accident to establish the annual income of the victim in its exactitude. Accordingly, the Learned Tribunal had taken steps in recording the evidence of PW-4 being the Income Tax Inspector posted at the office of the Principal Commissioner, Income Tax-18, 169, A.J.C. Bose Road, Kolkata-700 014.

7. PW-4, inter alia, deposed "*this is the copy of the Income Tax Return for the Assessment 2013-14 in respect of assessee Sangeeta Chanda, PAN AEVPC1781P. This is the attested by the Deputy Commissioner of Income Tax. As per the said return the gross income of the said Assessee for the relevant period was Rs.6,13,958/- and taxable income was Rs.3,63,960/-(the copy of the income tax return is marked as Exhibit-17). This is the attested copy of Income Tax Return for the Assessment year 2014-2015 in respect of the said assessee. It is duly attested by the Deputy Commissioner of Income Tax [the copy of the Income Tax Return is marked Exhibit-17(a)]. Her gross income for the relevant period was Rs.7,54,178/- and taxable income was Rs.6,05,428/-.* "

8. During cross examination PW-4 deposed as follows :-

> " *From the documents brought by me it cannot be said whether she paid income tax for any period before the assessment year 2013-14. There are no record about submission of income tax return subsequent to the assessment year 2014-15. The spelling of the name of the assessee as per the income tax return is SANGEETA CHANDA. During the assessment year 2013-14 the assessee paid income tax of Rs.1,68,88/-. The I.T Return for the assessment year 2013-2014 was submitted on 24th July, 2013. The assessee had no option source of income except salaried income. During the assessment year 2014-15 she paid Rs.31,761/- towards income tax. In the assessment year 2014-15 she availed deduction of a sum of Rs.1,50,000/- under the head interest on borrowed capital. During the assessment year 2013-14 she availed total deduction of Rs.2,50,000/- frodm gross income under two heads namely, interest on borrowed capital and deduction under Section 80C of the Income Tax Act. The I.T Return for the assessment year 2014-15 was submitted on 14th January, 2015.*"

9. The Income Tax Return filed by the victim on 14th June, 2015 for the assessment year 2014-15 which stipulated her gross annual income to be Rs.7,54,178/- and the taxable income Rs.6,05,428/- was prior to her death in the accident which occurred on 18th June, 2015."

10. Accordingly, in the facts and circumstances of the case, there is no scope to doubt the veracity of the document as well as the payment of the Income Tax vide the Income Tax Return marked as Exhibit-17 and 17(a) which mentioned both the gross income as well as the taxable income of the victim respectively as well as the amount of tax paid. The victim had paid the Income Tax to the tune of Rs.31,761/-

11. Since the occurrence of the accident, the driving license, 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 consider the point agitated by both the parties. A document marked as exhibit-13/3 as well as the exhibit-14 had been issued by the respondent insurance company Income Tax Department beyond the control of either of the victim or the control the driver of the offending vehicle therefore the submission of the Learned Advocate representing the appellant/Insurance Company cannot be accepted. In view of the above observation the impugned judgment and order passed by the learned tribunal is not interfered with.

12. Heard the rival contention of the learned advocate representing all the parties.

13. The Hon'ble Supreme Court in Reliance Life Insurance Company Ltd. & Anr. vs. Jaya Wadhwani and Branch Manager, Reliance Life Insurance Company Ltd. vs. Usha Soni had, inter alia, observed that:-

> "*In the present appeals, we do not find any such issue of back dating but the date of issuance of the policy would be the relevant date for all purpose are and not the date of proposal or the date of issuance of the receipt. In view of the above, the stand taken by the appellant is approved. The impugned orders are thus liable to be set aside.*"

14. 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.1,04,98,344/- is modified as follows:

| | |
|---|---|
| Income | Rs. 7,54,178/- |
| Less: Tax paid | Rs. 31,761/- |
| | Rs. 7,22,417/- |
| Less : Personal expenses (50%) | (-)Rs. 3,61,208.50/- |
| | Rs.3,61,208.50 |
| Add: Future Prospects (50%) | Rs.1,80,604.25 |
| | Rs.5,41,812.75/- |
| Multiplier (x 16) | X 16 |
| | Rs.86,69,004/- |
| | Rs. 36,000/- |
| Add: Non-pecuniary damages | Rs. 36,000/- |
| Total Entitlement | Rs. 87,05,004/- |

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

2 (2009) 6 SC 121

along with interest @6% per annum from the date of filing (08.12.2015) till payment

Note : 1) Insurance Company had deposited Rs.1,60,77,656/- earlier in High Court.

2) Registrar General to calculate the compensation of Rs.87,05,004/- with 6% interest from filing and disburse it to claimants.

3) Insurance Company to take back the refund of entire balance amount with all accrued interest from High Court.

15. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 1,60,77,656/=(Rs. 25,000 + 1,60,52,656) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

16. The Learned Advocate representing the respondent Nos. 1 & 2/claimants are entitled to receive the amount of Rs. 87,05,004/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

17. 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 present respondent Nos. 1 & 2/claimants as mentioned by Learned Judge, Motor

Accident Claims Tribunal cum Court of the Judge, Bench No.IX, City Civil Court at Calcutta in MAC Case No.382 of 2015 on proof of proper identification of the respondent No.1 and 2/claimants 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 claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

18. The instant appeal and cross objection are disposed of accordingly.

19. The pending application, if any, stands disposed of.

20. The interim order if any stand vacated.

21. The TCR be sent down to the concerned tribunal forthwith.

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

**( Ananya Bandyopadhyay, J. )**