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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**F.M.A 988 of 2023**

**The Oriental Insurance Co. Ltd.**
**-Vs-**
**Payal Ghosh & Ors.**

**With**

**COT 107 of 2023**

**Payal Ghosh & Ors**
**-Vs-**
**The Oriental Insurance Co. Ltd.**

For the Appellant/
Insurance Company : Ms. Gopa Das Mukherjee

For the Respondents/ : Mr. Jayanta Mondal
Claimants

Heard and Judgment on : 06-05-2025

**<u>Ananya Bandyopadhyay, J.:-</u>**

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading ***"For Hearing"*** for further clarification.

2. The learned advocates representing both the parties are present.

3. Two claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge ($1^{st}$) Court, Bankura being MAC Case No. 43/2017, claiming an award of Rs.

5,00,000/- whereby the aforesaid deceased expired due to a road traffic accident on 01.11.2015 at about 2:10 pm. The offending vehicle bearing Registration No. WB-39A/6001 hit the aforesaid deceased while he was travelling with her family members by car in a rash and negligent manner. Consequently, the victim expired on the spot. Subsequently, based on a complaint, Bishnupur P.S. Case No. 163/2015 dated 02.11.2015 was instituted against the driver of the offending vehicle as aforesaid.

4. The owners of the offending vehicle appeared in this case but did not contest this case and the case was heard ex parte against them.
5. The respondent, the Oriental Insurance Company Limited contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.6,07,600/- as well as an interest of 7% from the date of filing the case, that is from 27/11/2015 payable by the Insurance Company.
7. The Learned Advocate representing the Appellants/Insurance Company submitted as follows:-
    a. The Learned Tribunal while assessing the amount of compensation was wrong in applying the multiplier of '16' instead of '15'.
    b. The Learned Tribunal should not have relied on the evidence of P.W. 1 who specifically stated that the Driving license bearing No. WB41/200070083927 did not exist at all and happened to be a fake driving license.

c. The Learned Tribunal ought to have held there was contributory negligence on part of the driver of the Bolero bearing registration No. WB-68N/3543.

d. The Learned Judge in passing the impugned Judgment and/or Order/Award has failed to appreciate the facts and circumstances of the case and the evidence on record and thereby has stepped into error in calculating the compensation amount by not adding the adequate amount on the account of loss of filial consortium, loss of estate and funeral expenses etc. as per present position of law and also the Learned Judge wrongly assessed the notional income of the deceased victim of Rs.3000/- per month instead of Rs.7000/- per month, which the victim during his life time used to earn as private tutor as well as used to save by rendering service to her family and as such the impugned award is bad in law and the same is liable to be enhanced.

e. It was submitted that initially the husband and daughters instituted the claim case and subsequently during pendency of the proceedings the husband of the deceased victim expired and at the time of calculating the awarded amount, the Learned Tribunal ought to have assessed the income of the victim to be Rs.-7000/- per month which she used to earn as Private Tutor and relied on the following decisions: -

   1) 2021 SAR (Civ) 147 [ Kirti & Anr. Etc. VS. Oriental Insurance Co. Ltd. & Ors.

2)2021 (3) T.A.C. 1 (S.C.) ( Rahul Sharma & Another VS. National Insurance Co. Ltd. & others] to

3)2022 (4) T.A.C. 707 (S.C.) [Shiv Kumar and Others VS. Gainda Lal and Others)

f. The Learned Tribunal ought to have applied Multiplier as 15 since the age of the victim between 36 to 40 years and the Learned Tribunal below in calculating the compensation amount had rightly added Future Prospect to the extent of 40% by following the aforesaid decisions Sarala Verma and Pranay Shethi of the Hon'ble Apex Court under Section 166 M.V. Act;

g. The Learned Tribunal below ought to have assessed the amount on conventional heads by following the decision of Pranay Shethi of the Hon'ble Apex Court.

h. The learned tribunal below rightly assessed compensation holding that the offending vehicle was responsible for the accident. It was submitted that the statement of eye witness should be given weightage and there was no specific statement regarding contributory negligence as such the appellant was not entitled to raise any question regarding contributory negligence in a case of joint tort-feasors, anyone can be made liable in a case of a composite negligence as per present position of law and relied on the following decisions cited in 1) 2009 (2) T.A.C. 11 [USha Rajkhowa and others VS. Paramount Industries and others; 2) 2013 (3) T.A.C. 181 (Cal) [New India Assurance Co. Ltd. VS. Smt. Saheli Sarkar and Others and 3)2015 (2) T.A.C.

677 (S.C.) [Khenyei Vs. New India Assurance Co. Ltd. and others]

i. Where the driver of the offending vehicle was not holding valid driving licence on the date of accident, in that event, at first the awarded amount would be paid by the Insurance Co. and after which could be recovered from the owner of the offending vehicle without filing a separate suit;

8. Heard the submission of the Learned Advocates representing the respective parties.

9. 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 as agitated by the Learned Advocates representing the both the parties.

10. The Learned Tribunal in the impugned judgment order opined as follows: -

*"On perusal of seizure lists (Exbt.4 series) it appears that in course of investigation the IO seized the driving licence of Arup Dangar (Driver of the offending vehicle bearing no. WB-39A/6001) on 08.11.2015 in connection with Bishnupur P.S.Case NO.163 of 2015 dated 02.11.2015 which was started on the basis of the F.I.R lodged due to death of Shibani Ghosh on account of road accident. On the other hand the O.P no.1/Insurer adduced evidence and proved that the driving licence in the name of Arup Dangar does not exists at all as per their computer database (Exbt.C). Therefore, there was breach of policy condition on the part of the owner of the vehicle and as such Insurer is not liable to indemnify the owner.*

*According to the Ld. Advocate for the petitioners/claimants, the O.P no.1 being Insurer of the Dumper bearing no. WB-39A/6001 at the relevant point of time cannot avoid its liability to pay compensation to the petitioners/claimants merely on the ground of violation of policy condition on the part of the owner/Insured.*

*The breach of policy condition e.g. disqualification of the driver of invalid driving licence of the driver as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoi8ding liability by the Insurer. Mere absence or, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the Insurer against the insured or the third parties. To avoid its liability towards the insured, the Insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.*

*Onus is always upon the Insurance Company to prove that the driver had no valid driving licence and that there was breach of policy conditions".*

11. The Learned Tribunal did consider the fact of entitlement on the part of the appellant/insurance company to pay compensation and recover the same from the owner of the offending vehicle, however, ultimately did not pronounce such direction in the impugned judgment. The victim working as a private tutor could have earned Rs.6,000/- per month, which would not have been improbable. The multiplier with regard to the age of the victim should have been 15.

12. 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.6,07,600/- is modified as follows: -

| | | |
|---|---|---|
| Annual Income Rs.5,000/- X 12 | | Rs.60,000/- |
| Add 40% Future Prospect | | Rs. 24,000/- |
| | | Rs.84,000/- |
| Less 1/3rd personal expenses | | Rs.28,000/- |
| | | Rs.56,000/- |
| Multiplier would be 15 | | X 15 |
| | | Rs.8,40,000/- |
| Add general damages | | Rs.84,000/- |
| Entitlement | | Rs.9,24,000/- |

13. The Respondent Nos.1 and 2/claimant are entitled to a sum of Rs.9,24,000/- along with 6% interest 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.

14. The Respondent/Insurance Company is to pay the compensation amount to the Appellant Nos.1 and 2/Claimants and recover the said amount from the owner of the offending vehicle.

15. It was further submitted by the Learned Advocate for the Appellant/Insurance company that the Appellant/Insurance Company to have deposited a sum of Rs. 6,07,600/- =(Rs. 25,000 + Rs.5,82,600/-)

[1] 2017(4)TAC 673(S.C)
[2] (2009) 6 SC 121

through two separate cheques as per challan filed by the Learned Advocate representing the Appellant/Insurance company.

16. The Respondent Nos. 1 and 2/claimants are entitled to receive the balance amount of Rs.3,16,400/- (Rs.9,24,000/- - Rs.6,07,600/-) along with interest at the rate of 6% per annum from the date of filing of the claim application under Section 166 of the Motor Vehicles Act till the date of actual realization.

17. The Learned Advocate for the Appellant/Insurance Company is to deposit the balance sum of Rs. 3,16,400/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

18. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter, disburse the same to the present respondent nos.1 and 2/claimants in equal share, as mentioned in the award passed by the Court of Motor Accident Claims Tribunal, Additional District Judge (1st) Court, Bankura being MAC Case No. 43/2017 on proof of their proper identifications of the Respondent Nos.1 and 2/claimants subject to payment of ad valorem Court's fees within four weeks from the date of passing this order..

19. The instant appeal along with connected application are disposed of accordingly.

20. The Trial Court Records shall be sent down to the concerned tribunal forthwith.

21. Copy of the order be sent to the Department as well as concerned tribunal for information.

22. Parties to act upon the server copy of this judgment.

**(Ananya Bandyopadhyay, J.)**

S.R. (A.R.C.)