

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 114 of 2024
National Insurance Co. Ltd.
v.
Kaustav Biswas & Anr.

With

COT 4 of 2024
Kaustav Biswas
v.
National Insurance Co. Ltd. & Anr.

For the Appellant/
Insurance Company

: Mr. Sanjay Paul

For the Respondent no.1/
Claimant

: Mr. Ashique Mondal
: Mr. Shahmeraz Alam

Heard on

: 28th February, 2025

Judgment on

: 21st April, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been preferred against the impugned judgment and award dated 31st July, 2023 passed by the Motor

Accident Claims Tribunal, Additional District Judge, Fast Track 4th Court, Alipore, 24 Parganas (South) in MAC Case No.09 of 2016.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the respondent no.1/claimant, who sustained injuries in an accident, which occurred on 30th March, 2015 at about 11.55 p.m. on James Long Sarani near M.P. Birla School within the jurisdiction of Behala Police Station with the involvement of an offending vehicle being a mini truck (TATA 407) bearing registration No.WB 25 A 7530, which approached at an exceeding speed rashly and negligently hit the vehicle being a Maruti WagnorR LXI bearing registration No. WB 06 G 5466 being driven by the victim from the opposite direction. The respondent no.1/claimant injured out of the accident as a result of the collusion between both the aforesaid vehicles and he had to be admitted at Calcutta Medical Research Institute on 31st March, 2015 and was discharged on 13th April, 2015.
4. The Learned Advocate representing the appellant/insurance company submitted that the learned Tribunal had assessed the functional disability to the extent of 50% contrary to the opinion of the Doctor who issued the disability certificate marked as Exhibit 21 to the extent of 30%. Moreover, the loss of income during the period of treatment was also granted despite multiplier method being applied. The respondent no.1/claimant was not entitled to

compensation on account of loss of marriage prospects as well as the future medical expenses

5. The Learned Advocate representing the respondent No.1/claimant submitted that based on oral and documentary evidence the learned Tribunals justifiably passed the compensation amount which need not to be interfered with.

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 respondent No.1/insurance company, this Court restricts itself only to the extent as agitated by the Learned Advocate representing the both the parties. The victim/claimant in absence of documentary evidence and oral evidence stated his exact nature of functional disability should have been assessed to have incurred physical disability to the extent of 30%. The victim/claimant is not entitled to any compensation with regard to the loss of marriage prospects, since he has already been granted a sum of Rs.1,50,000/- for pain and suffering. The clinical condition of the victim/claimant should not have been an impediment to loss of marriage prospects.

7. *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. 17,79,493/- is modified as follows:*

¹ **1 2017(4)TAC 673(S.C)**

² (2009) 6 SC 121

Monthly Income	Rs. 7,670/-
Annual Income (Rs. 7,670 x 12)	<u>X 12</u>
	Rs. 92,040/-
Future Prospect to be added(40%)	<u>Rs. 36,816/-</u>
Multiplier to be "17"	<u>Rs. 1,28,856/-</u>
	<u>X 17</u>
	Rs. 21,90,552/-
Disability (30%)	Rs. 6,57,165/-
Medical expenses to be added	Rs. 2,74,337/-
Non-pecuniary damages (Pain and suffering)	Rs. 1,50,000/-
Future medical expenses to be added	Rs. 1,50,000/-
Loss of income during treatment	<u>Rs. 59,880/-</u>
Entitlement	Rs. 12,91,382/-

8. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.26,95,067/- (Rs. 25,000/- + Rs. 26,70,067/-) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
9. The appellant/claimant is entitled to receive the amount of Rs. 12,91,382/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 15.01.2016 till the date of actual realization.
10. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the present respondent No. 1/claimant as mentioned in the impugned judgment passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track 4th Court,

Alipore, 24 Parganas (South) in MAC Case No.09 of 2016 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 balance amount through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

11. 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 was 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 respondent no.1/claimant.
12. The instant appeal and COT applications are disposed of.
13. The TCR be sent down to the concerned Tribunal forthwith.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

S.R.