

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 180 of 2024

Shephali Adak & Anr.

Versus

United India Insurance Company Limited & Anr.

For the Appellants : Mr. Amit Ranjan Roy

For the Respondent No.1
Insurance co. : Ms. Sucharita Paul.

Heard & Judgment on : 29th January, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellants/claimants and the respondent No.1/Insurance Company are present.
2. The instant appeal had been filed against the judgment and award dated 30.08.2023 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Paschim Medinipore in M.A.C. Case No. 8 of 2021.
3. An application under Section 166 had been filed by the claimants due to the death of the victim in an accident which occurred on 07.11.2020 at about 7.30 P.M. with the involvement of the offending vehicle being a Maruti Swift Dezire bearing registration no. WB-34BE/9011 which collided with the motorcycle driven by the victim near Akna Bus Stand under the jurisdiction of Pingla Police Station, District – Paschim Medinipore. The victim unfortunately died on the spot.

4. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal did not consider the monthly income of the victim as claimed to be Rs.8,000/-being earned by him as a Mason. Moreover, 40% was not considered for providing the element of future prospects considering the age of the victim to be 20 years and as a bachelor. The Learned Tribunal further did not grant any amount towards compensation concerning the general damages.
5. The Learned Advocate appearing for the respondent No.1/Insurance Company vehemently opposed the contention of the learned Advocate representing the appellants/claimants stating that the victim died during the Covid pandemic period and was presumably without work as a mason, so, under no stretch of imagination could have earned a sum of Rs.8,000/- per month at the time of prevalence of the covid pandemic . However, the Learned Advocate representing the respondent No.1/Insurance Company did not dispute the amount of compensation failed to have been granted towards the component of 'future prospect' and 'general damages'.
6. Since the occurrence of the accident, the involvement of the offending vehicle, driving license, Insurance Policy and the ancillary issues have not been disputed by the Learned Advocate representing the respondent No.1/Insurance Company, this Court restricts itself only to the issues raised with regard to the calculation of the compensation awarded. Irrespective of the period of covid pandemic which stretched for a considerable period of time it cannot be indubitably stated that the victim working a 'mason', was out of employment and could not have earned through his avocation as a mason. In the absence of such evidence that the victim was

unemployed during the period of covid pandemic as agitated by the Learned Advocate representing the respondent No.1/Insurance Company it would not be improbable to consider the monthly income of the victim to be Rs.7,500/- considering the fiscal index prevalent on the relevant date and time.

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. 7,42,800/- is modified as follows:

Monthly Income	Rs. 7500/-
Annual Income(7500x 12)	Rs. 90,000/-
	Rs. 45,000
Deduction ½	Rs. 45,000/-
Future Prospect (40%)	Rs. 18,000/-
Multiplier to be "18"	Rs. 63,000/- X 18
General Damages	----- Rs. 11,34,000/- Rs. 33,000/-
Less Award	Rs. 11,67,000/- Rs. 7,42,800/-
Entitlement	Rs. 4,24,200/-

8. The Learned Advocate representing the respondent No.1/insurance company submits to have disbursed the sum of Rs. 7,42,800/- before the Learned Tribunal which had been withdrawn by the learned advocate representing the appellants/claimants. The appellants/claimants are entitled to a sum of Rs. 4,24,200/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 04.01.2021 till the date of its actual realization.

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

² (2009) 6 SC 121

9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,24,200/- along interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within a period of four weeks from the passing of this order.
10. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disbursed the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Paschim Medinipore in M.A.C. Case No. 8 of 2021 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
11. The instant appeal is disposed of accordingly.
12. The TCR is sent down to the concerned tribunal forthwith.
13. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)