

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 185 of 2024

**Laxmi Rani Layek
Versus**

Bajaj Allianz General Insurance Company Ltd. & Anr.

For the Appellant : Mr. Krishanu Banik,
Mr. Tathagata Banik.

For the Respondent No.1/
Insurance co. : Mr. Indradip Das.

Heard & Judgment on : 14th January, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 20th July, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track 3rd Court, Sadar, Paschim Medinipur in M.A.C. Case No. 67 of 2016.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant for the death of the victim, aged about 44 years subjected to an accident which occurred on 26.08.2015

between 5.00 to 6.00 hours on National Highway – 6 within the jurisdiction of Debra Police Station in the District of West Medinipore with the involvement of the offending vehicle being a Maruti Van bearing registration no. WB/34N/5206 which approached at an exceeding speed being driven rashly and negligently, it abruptly lost its control and hit the victim who sustained severe injuries all over his body and had been transmitted to Debra Hospital where he was declared to be dead.

4. The Learned Tribunal pronounced the impugned judgment and order after assessing the oral as well as documentary evidence and disposing all the issues framed.
5. Learned Advocate representing the appellant/claimant submitted that the learned Tribunal failed to consider the monthly income of the victim to be Rs.6,000/- as an agricultural labour and considered a modicum amount of Rs.3,000/-. Moreover, the learned Tribunal incorrectly granted the general damages to the extent of Rs.77,000/- instead of Rs.84,000/- considering 20% increment on the amount of Rs.70,000/- as per the guidelines of the Hon'ble Supreme Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹. Since the accident had taken place in the year 2017 and the judgment was pronounced in the year 2023 with a gap of six years entitling the appellant/claimant to an

increment of 10% for each three years totaling to 20% of Rs.70,000/-. It was further submitted that the learned Tribunal had granted the rate of interest to be paid from the date of appearance of the Insurance Company before the learned Tribunal in MAC Case No. 67/2016 instead of granting the sum from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

6. The learned Advocate representing the respondent No.1/Insurance Company confronted the submissions of the learned Advocate representing the appellant/claimant stressing that the claimant failed to produce oral as well as documentary evidence in support of the income of the victim to the extent of Rs.6,000/- being an agricultural labour. However, did not dispute the grant of 20% on the general damages in consonance with the observation of the Hon'ble Supreme Court, as aforesaid. He further did not refute the contention of the rate of 6% interest to be paid from the date of filing of the claim application till the date of its actual realization.
7. 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 of considering the monthly income of the victim as well as the computation of the compensation amount which needs to be rectified in view of the observation of the Hon'ble Supreme Court in National insurance company Ltd. Vs. Pranay Shetty & Anr. (supra). The victim had been an agricultural in rural background and could not produce the documents evidencing his avocation cannot be expected. More-over, his yearly income was also not taxable. It would not be improbable for a men to work as an agricultural and to earn a Rs. 6000/- per month in the year 2016 considering the fiscal index.

8. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr² and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.³ The impugned award of Rs. 4,97,000/- is modified as follows:

Monthly Income	Rs. 6000/-
Annual Income	Rs. 72,000/-
Future Prospect to be added(25%)	Rs. 18,000/-
	<u>Rs. 90,000/-</u>
1/3 rd Deduction	Rs. 30,000/-
Personal Expenses	-----
	Rs. 60,000/-
	X 14
Multiplier to be "14"	<u>Rs. 8,40,000/-</u>
	Rs. 84,000/-
General Damages	<u>Rs. 9,24,000/-</u>

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

³ (2009) 6 SC 121

Less Award	Rs. 4,97,000/-
Entitlement	Rs. 4,27,000/-

9. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 4,97,000/-. The appellant/claimant are entitled to a sum of Rs. 4,27,000/- along with 6% interest per annum to be paid from the date of filing of the claim application i.e. 09.02.2016 till the date of its actual realization.
10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,27,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .
11. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track 3rd Court, Sadar, Paschim Medinipur in M.A.C. Case No. 67 of 2016 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court's fees.
12. The instant appeal is disposed of accordingly.
13. The pending applications if any stands disposed of.

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

(Ananya Bandyopadhyay, J.)

Srimanta, A.R./c.m.