

District: South 24 Parganas

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 6 of 2023

UNITED INDIA INSURANCE CO. LTD.

VS.

ARPITA SARKHEL & ANR.

Mr. Sanjay Paul

... for the appellant/Insurance Company

Mr. Ashique Mondal

... for the respondents/claimants

Heard on : 29.07.2025

Judgment on : 29.07.2025

Ananya Bandyopadhyay J.

1. The Learned Advocates representing the respective parties are present in Court.

2. The instant appeal had been filed against judgment and order dated 31st August, 2022 passed by the Learned Additional District Judge cum Motor Accident Claims Tribunal, Fast Track, 1st Court, Alipore, South 24 Parganas in M.A. C. Case No. 811 of 2019 under Section 166 of the Motor Vehicles Act.

3. An application under Section 166 of the Motor Vehicle Act, had been filed by the victim injured in an accident which occurred on 02.08.2019 at 3.40P. M. on DPS Road in front of Tollygunge Tram Depo wherein the victim being passenger of the offending vehicle being an Auto

Rickshaw bearing registration No.WB-04D/8143 lost control due to reckless driving of the Driver of the offending vehicle and over turned. Thereafter, the victim having sustained injuries was admitted at the Hospital for six days.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the Learned Tribunal though disbelieved the deposition of PW-2 who had assessed the disability to the extent of 38%, however, finally considered the extent of functional disability to be 25% without further investigation or reliance on special opinion or further medical documents of recovery.

5. It was further submitted the Learned Tribunal had considered the yearly income of the victim based on the document marked as exhibit No.24 series to the extent of Rs.3,27,900/- pertaining to the assessment year 2019-2020 which should have otherwise considered to be Rs.2,75,464/- for the assessment year 2018-19 marked as exhibit No.24 series.

6. The Learned Advocate representing the respondents/claimants submitted that the Learned Tribunal taking into consideration all the aspects had rightly granted the compensation awarded which shall not be interfered with.

7. Considered the rival contentions of the respective parties.

8. 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. The deposition of representative of the Income Tax Department, Bowbazar Branch as P.W. 6 revealed the document to have been marked as Exhibit-

24 series which reflected the income of the injured victim with respect of the assessment year 2018-19, assessment year 2019-20 to be Rs. 3,27,900/- for the year 2020-21 to be Rs. 1,86,980/- for the year 2021-22 to be Rs. 2,41,252/-. The income tax return being a part of the document marked as Ext. 24 series mentioned the date of filing of the return to be 31st August, 2019 for the assessment year 2019-20. The accident suffered by the victim was on 2nd August, 2019. The victim was thereafter hospitalized for 6 days and had suffered fracture injuries on her legs which could not have enabled her to attend her profession as an advocate to earn her income comprising the entire sum to have been depicted in the income tax return as aforesaid. The amount of Rs. 3,27,900/- therefore, should have been earned by her prior to 2nd August, 2019. Accordingly, the Learned Tribunal had rightly considered the yearly income of the victim to be Rs. 3,27,900/-. As far as the functional disability to have been considered to be 25% has been supported by valid reasons which this Court is not inclined to interfere with.

9. In view of the aforesaid observations FMA 6 of 2023 is dismissed.

10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 20,73,884/=(Rs. 25,000 + 20,48,884) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

11. 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 No.1/claimant as mentioned in the impugned judgment and order passed by the Learned Additional District Judge cum Motor Accident Claims Tribunal, Fast Track, 1st Court, Alipore, South 24

Parganas in M.A. C. Case No. 811 of 2019 under Section 166 of the Motor Vehicles Act on proof of proper identification of the respondent No.1 to /claimant 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 respondent No.1 and 2/claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

12. 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.

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.)