Bm/cm Form No. J(2)

District: Calcutta

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1474 of 2024

NATIONAL INSURANCE COMPANY LTD.
VS.
DIP KAUR & ANR.

Ms. Sucharita Paul ... for the appellant/ Insurance Company

Mr. Ashique Mondal ... for the respondents/ claimants

Heard on : 02.08.2025

Judgment on : 02.08.2025

Ananya Bandyopadhyay J.

1. The learned advocates representing both the parties are present in court.

2. The instant appeal had been filed against the judgement and order dated 24.07.2024 passed by the learned Judge, Motor Accident Claims Tribunal, Bench No.XII, City Civil Court at Calcutta in MAC Case No.285 of 2009.

3. An application under Section 166 of the Motor Vehicle Act, had been filed by the claimants due to the death of their son in an accident which occurred on 13th March, 2004 at about 22:10 hours

with the involvement of the offending vehicle being Lorry bearing No.WB-03-0705 proceeding at an exceeding speed rashly and negligently colluded with the victim who was driving his motor cycle resulting in incidental fall and being run over by the offending vehicle whereby the victim expired on spot.

4. The learned advocate representing the appellant/Insurance Company submitted certain documents which was marked as Exhibit- 'X' for identification relating to Income Tax Return as well as a Auditor's report could not be proved before the learned tribunal with regard to its contents in its entirety. The learned Tribunal accordingly, had considered the monthly income of the victim to be Rs.7,000/- based on the evidence of the father of the victim to have been PW-1. It was further submitted that the victim had been a Policy and the Tribunal had granted 50% towards the element of future prospect as compensation as well as a compounding interest of 6% in default along with simple interest of 6% with regard to age of the victim to be 28 years on the date of accident. The Learned Tribunal had considered the multiplier to be '18' instead of '17'. Further the compensation towards general damages was excessive. It was further submitted that the owner of the offending vehicle did not possess a valid driving license. However, on proof of the same before the Learned Tribunal the liability was cast upon the appellant Insurance Company to compensate the claimant apart from being exonerated.

5. The learned advocate representing the respondent no.1/claimant submitted that the documents marked as Exhibit –'X' for identification pertained to the yearly income of the victim to be Rs.1,70,000/- as per the Income Tax Return substantiated by the Auditors report. However, it was not possible for the claimants to cite the concerned official of the Income Tax Department as well as the Auditors to appear before the Court and authenticate the veracity of such documents.

6. 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.

7. The Tribunal in the impugned judgement and order had *inter alia*, stated as follows :-

> *" I have gone through the materials in the record and found that victim, Gurdayal @ Gurdial Singh completed his graduation (Bachelor of Commerce) from Calcutta University and his parents claimed that he had propietorship business under the name and style "M/s. Sohal Engineering Work" and he was self employed. It has been mentioned that his yearly income was Rs.1,70,000/- and he submitted income tax of Rs.21,000/- for the Assessment year 2003-2004. They have also mentioned that his permanent A/C number was AJMPS-144BK. The applicants produced photostat copy of SARAL form. They also produced Auditor's report regarding income tax but that was also a photostat copy. From these documents, the name of the victim, his father's name which can also be seen. But his unfortunate parents could not collect the certified copy of those documents and also could not bring the Chartered Accountant, namely, Sudhir Jha who submitted the Auditor's report with respect to M/s. Sohal Engineering Work, whose proprietor was Gurdayal @ Gurdial Singh as a witness before this court. So, it has become a bit difficult for this Tribunal to rely upon these*

documents but the documents though are on photostat copy are showing that the applicants/parents of the victim are not lying before the Tribunal. We have to keep this in our mind that the victim met with road traffic accident and lost his life in the year 2004 when computer generated copies were not in vogue and as such, father of the victim as PW-1 could not submitted the original SARAL Form in computer generated copies. It was but natural that only the photostat copies remained with them and they filed those papers for perusal of the Tribunal. So, wherefrom the grieving parents will find the original SARAL Form for submitting that same before this Tribunal for the Assessment year 2003-2004? This proves that in the year 2003-2004, victim, Gurdayal @ Gurdial Singh who was a Bachelor in Commerce, was self-employed and was an earning member of the family. The applicants mentioned it in their application and PW-1 also mentioned it during his evidence recording that their victim son was the only breadwinner for the family. So, they were dependent on their son. It has come on record that though he was bachelor, he was looking after his parents and his younger brother, Jaswinder Singh who lodged the F.I.R after his untimely accidental death.

As we have already held that we have found paper though in photostat from regarding proof of income of victim, Gurdayal @ Gurdial Singh and I cannot expect that the old parents will get the original SARAL Form from income tax department for the financial assessment year 2003-2004 because that statement has already been submitted before the Income Tax Office. Parents of the victim had shifted to Punjab, father of the victim has now dead and for a mother of 71 (seventy one) years age, it is next to impossible to collect the original papers by coming from Punjab and locating the same in West Bengal.

As such, I wish to believe those documents on its face, which are before this Tribunal where the yearly income of the victim has been shown as Rs.1,70,000/-. Here it is necessary to mention that as mother of the victim she herself is claiming her son's monthly income at Rs.7,000/- for the computation. I will accept the same as correct.

We have self declared photostat copies of Saral Form and Auditor's report which shows the monthly income around Rs.14,000/- per month but when the claimants themselves are not asking for this amount as monthly income, Court will admit Rs.7,000/- as the monthly income of the victim as the same has been put in the written argument by the mother of the victim.

"Adequate compensation" is considered to be fair and equitable compensation. Courts shoulder the responsibility of deciding 'adequate compensation' on a

> *case-to-case basis. However, it is imperative to the Courts to grant such compensation which has nexus to the actual loss."*

8. The Learned Tribunal after explaining the reasons for considering the monthly income of the victim and the status of the claimants has assessed the monthly income which this court is not inclined to interfere with. However, the learned Tribunal has committed an error in considering the multiplier to be "18" instead of "17" with regard to age of the victim to be 28 years on the date of the accident as well as the component of future prospect to be 50% instead of 40% accordingly. The evidence of DW-1 being the authorised person of the Licensing authority PVDT Kolkata, inter alia, stated as follows :-

> *"In the summon it was asked to bring particulars of Driving Licence No.WB01199735 in the name of Shiv Kumar Rai. I have brought photocopy of Driving Licence No.199735 from the register-one for transport and another non-transport. The non-transport is in the name of Pradip Kumar Agarwal and the transport licence is in the name of Dhananjay Shukla. This is mentioned by the Licencing Authority in my authorisation letter. The two photocopies are attested by the Licencing Authority. I have not brought the register today. Let the two photocopies of licence be marked as X for identification and Y for identification. Our office code for driving licence is WB01. The licence No. WB01199735 was never issued in the name of Shiv Kumar Rai.*
>
> ***Further examination in chief of DW-1 on 03.01.18.***
>
> *As directed on the last date during my examination on dock, I brought the two registers Transport and Non-transport with respect to the said driving licence number.*
>
> *Witness shown register of non-transport category. The driving licence no.WB-01199735 was issued in the name of Pradip Kumar Agarwal(non-transport). This is mentioned in page no.135 of the non-transport register. Let the page be marked as exbt. B.*
>
> *This is the photocopy of page 135 duly attested by the licencing authority which is already marked as X for identification on 10.11.17. The photocopy is marked as exbt. B*

after comparing with the original and kept in the record. The register is returned.

Witness shown register of transport category. The driving licence no.WB-01199035 was issued in the name of Dhananjay Shukla. WB-01 is our office code and licence no is 199035. The same applies to non-transport category. This is mentioned in page no.135 of transport register. Let the page be marked as Exbt. C.

This is photocopy of page no 135 of transport register duly attested by the licencing authority which is already marked as Y for identification dated 10.11.17. The photocopy is marked as exbt. C after comparing with the original and kept in the record. The register is returned.

In both the registers it does not appear that the said driving licence numbers were issued in the name of Shiv Kumar Rai."

9. The document marked as Exhibit- 'B', Exhibit- 'X' for identification and Exhibit –'Y' for identification initially reflected that driving licence was not issued in the name of the driver of the offending vehicle indicating a fake driving licence. Under the facts and circumstances of this case and the deposition of the D.W.1 along with the document marked as Ext.B, the appellant/insurance company is to pay the compensation award and recover the same from the owner of the offending vehicle on strict proof of its claim.

Monthly income	Rs.7,000/- x 12
Annual Income (x 12)	Rs.84,000/-
Less : Personal expenses (50%)	Rs.42,000/-
Add : Future prospects (40%)	Rs.16,800/-
Multiplier x 17	Rs. 58,800/- x 17 Rs.9,99,600/-

Add: Non-pecuniary damages	+ Rs.36,000/- Rs.10,35,600/-

10. The learned advocate representing the appellant/Insurance Company submitted to have deposited a sum of Rs.24,39,600/-= (Rs.25,000/- + 24,14,600/-) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

11. The learned advocate representing the respondent nos.1/claimant is entitled to receive the amount of Rs.10,35,600/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

12. 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 account of the present respondent nos.1/claimant as mentioned in the impugned judgement and order passed by the learned Judge, Motor Accident Claims Tribunal, Bench No.XII, City Civil Court at Calcutta in MAC Case No.285 of 2009 on proof of proper identification of the respondent no.1/claimant subject to payment of ad valorem Court fees within six weeks and refund the differential amount if any, through a cheque to the Learned Advocate representing the Insurance Company for the accounts of the insurance company. The office of the Learned Registrar General, High Court at Calcutta will instruct the claimant to provide details

of his bank account with relevant documentary proof, prior to such disbursal as aforesaid.

13. The instant appeal is disposed of accordingly.

14. The pending application, if any, stands disposed of.

15. The interim order if any, stand vacated.

16. Copy of the order be sent to the Department as well as the concerned Tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)