

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 948 of 2024
Syed Bechu & Ors.
Versus
HDFC ERGO General Insurance Co. Ltd. & Anr.

Mr. Sanat Kumar Mullick

...for the Appellants/claimants.

Mr. Soumalya Ganguli

...for the Respondent No.1/insurance company.

Heard on: January 7, 2025.

Judgment on: January 7, 2025.

Ananya Bandyopadhyay, J:- Both the Learned Advocates representing the appellants/claimants and the respondent No.1/insurance company are present.

The instant appeal had been filed against the judgment and award dated 8th June, 2023 passed by the learned Judge, Bench No. XI of Motor Accident Claims cum City Civil Court at Calcutta in M.A.C. Case No. 9 of 2019.

An application under Section 166 of the Motor Vehicles Act had been filed for the death of the victim aged about 23 years out of an accident which occurred on 18th November, 2018 at 6.15 a.m. when the victim computing on his motor cycle was hit by the offending vehicle being Lorry bearing registration No. WB-19J/3142 at A.J.C. Bose Road Fly Over Bridge at the crossing of Park Circus which eventually resulted in his death.

The Learned Tribunal disposed of the issues framed on appreciation of both oral and documentary evidence and awarded through the impugned judgment a sum of Rs. 13,54,000/- as compensation in favour of the appellants/claimants.

Heard the rival contentions of the Learned Advocates for the appellants/claimants as well as respondent No.1/insurance company.

The Learned Advocate representing the appellants/claimants submitted the Learned Tribunal considered the multiplier to be “17” instead of 18 with regard to the age of the victim to be 23 years.

The Learned Advocate further submitted that the Learned Tribunal erroneously granted the consolidated amount of Rs. 1,00,000/- towards future prospect without considering 50% of the annual income to be granted in case of the victim to have expired below 40 years of age in terms of guidelines of the Hon’ble Supreme Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr¹*.

The Learned Advocate further submitted that the Learned Tribunal had granted the rate of interest to be paid from the date of institution of the hearing till the date of its actual realization disregarding the provisions of Section 170 of the Motor Vehicles Act wherein the interest element had to be computed from the date of filing of the claim application.

The Learned Advocate representing the respondent No.1/insurance company submitted that the Learned Tribunal erroneously granted a sum of Rs. 20,000/- towards pain and suffering in case of the victim who expired in an accident and the same should not have been granted in favour of the appellants/claimants.

Since the occurrence of the accident, the involvement of the offending vehicle, driving licence, the route permit, the insurance policy, etc. and other ancillary issues have not been disputed by either of the parties, this Court restricts itself only to the points raised by the Learned Advocate representing the appellants/claimants in terms of multiplier, the amount of future prospect and the date from which the rate of interest is to be calculated. The documents

namely Post Mortem Report marked as Ext. 4 and Aadhaar Card Marked as Ext. 9 revealed the age of the victim on the date of the accident to be 23 years. Therefore, the multiplier in terms of guidelines of the Hon’ble Supreme Court in *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*² should be 18 instead of 17. The Learned Tribunal was incorrect in granting a sum of Rs. 1,00,000/- towards for future prospect disregarding the guidelines enumerated in *National insurance company Ltd. Vs. Pranay Shetty & Anr*³ (supra) whereby the victim being a bachelor in permanent employment endorsed by the document marked as Exts. 16, 17 and 18 series would entitle him to 50% of the annual income since his age was below 40 years.

Considering the observations of the Hon’ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr*⁴ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*⁵, the impugned award of Rs. 13,54,000/- is modified as follows:

Monthly Income	Rs. 12,000/-
Future Prospect (50%)	Rs. 6000/-
Annual Income	Rs. 18,000/-
	X 12
Deduction (50%)	Rs. 2,16,000/-
	50%
Multiplier to be “18”	Rs. 1,08,000/-
	X 18
Loss of Estate	Rs. 19,44,000/-
General Damages	Rs. 16,500/-
Less Award	Rs. 16,500/-
Entitlement	Rs. 19,77,000/-
	Rs. 13,54,000/-
	Rs. 6,23,000/-

The Learned Advocate representing the respondent No.1/insurance company submits to have disbursed the sum of Rs. 13,54,000/- before the

² (2009) 6 SC 121
¹ 2017(4)TAC 673(S.C)
¹ 2017(4)TAC 673(S.C)
⁵ (2009) 6 SC 121

Learned Tribunal which had been withdrawn by the learned advocate representing the appellants/claimants. The appellants/claimants are entitled to a sum of Rs. 6,23,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.

The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 6,23,000/- 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 a period of four weeks from the passing of this order.

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, Bench No. XI of Motor Accident Claims cum City Civil Court at Calcutta in M.A.C. Case No. 9 of 2019 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.

The instant appeal is disposed of accordingly.

The TCR is sent down to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m.

(Ananya Bandyopadhyay, J.)