

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT (MV) 593 of 2022

The Oriental Insurance Co. Ltd.

v.

Aspara Bibi & Ors.

with

COT 30 of 2023

Aspara Bibi & Ors.

v.

The Oriental Insurance Co. Ltd. & Anr.

For the Appellant/
Insurance Company

: Ms. Sucharita Paul

For the Respondents/
Claimants

: Mr. Jayanta Banerjee
Mr. Argha Bhattacharjee

Heard and Judgment on

: 07/05/2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading **“For Hearing”** for further clarification.
2. The learned advocates representing both the parties are present.
3. Four claimants of the deceased filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District

and Sessions Judge, 4th Court, Paschim Medinipur being MAC Case No. 8/2019, claiming an award of Rs. 23,00,000/- as well as 10% interest payable from the date of filing the case till realization whereby the aforesaid deceased expired due to a road traffic accident on 24.01.2018. The offending vehicle being a truck bearing Registration No. WB-33/3044 hit the aforesaid deceased in a rash and negligent manner. Consequently, the victim was shifted to Debra Hospital and then to Midnapore Medical College Hospital and expired on 26.01.2018. Subsequently, based on a complaint, Debra P.S. Case No. 487/18 dated 27.08.18 was instituted against the driver of the offending vehicle as aforesaid.

4. The owner of the offending vehicle filed his written statements, but ultimately did not contest the case. The case was heard ex parte the owner of the vehicle.
5. The respondent, the Oriental Insurance Co. Ltd. contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.15,67,000/-with the interest as per banking rate.
7. The Learned Advocate representing the Appellant/Insurance Company submitted that the learned Tribunal had considered the income in accordance to the wages paid under the Minimum Wages Act. Moreover, the age of the victim was considered with regard to the post-mortem report. The compensation towards spousal consortium and parental consortium had been wrongly granted. The complaint under Section 156(3) of the CrPC was

filed after seven months of the accident deliberately implanting the offending vehicle, which was otherwise not involved in the accident.

8. The Learned Advocate representing the Respondent nos.1 to 4/Claimants submitted to have filed a Cross Objection being COT 30 of 2023 for enhancement of the monthly income of the victim, who used to earn Rs.15,000/- per month, as an employee at a sawmill, which was not disputed before the learned Tribunal since the said claim was not controverted through cross-examination or through plausible suggestion. Moreover, no specific ground was taken in the written statement with regard to the non-involvement of the offending vehicle along with contravention in the cross-examination.
9. Heard the submissions of the learned advocates representing the respective parties and considered the materials on record.
10. 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 as agitated by the Learned Advocates representing the both the parties. In absence of documentary evidence to the extent merely on the assertion that the victim used to earn Rs.15,000/- per month. The learned Tribunal discarding the claim had rightly considered the income of the victim to be Rs.8,000/- per month. Apparently, the learned Tribunal erroneously considered the amount granted towards the loss of spousal consortium as well as parental consortium and the multiplier should have been considered as 15 instead of 14.

11. In view of the observations of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr.***¹ and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***² the impugned award is modified to the following extent: -

Monthly income		Rs.8,000/-
Add 40% Future Prospect		Rs.3,200/-
		Rs. 11,200/-
	X 12	
Annual income		Rs.1,34,400/-
Less 1/4 th for personal expenses		Rs. 33,600/-
Add multiplier		Rs.1,00,800/-
	X 15	
Add general damages		Rs.15,12,000/-
		Rs. 77,000/-
Total entitlement		Rs.15,89,000/-

12. The respondent No.1 to 4/claimants are entitled to a sum of Rs.15,89,000/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its actual realization.

13. It was further submitted by the Learned Advocate for the Appellant/Insurance company that the Appellant/Insurance Company to have deposited a sum of Rs. 15,67,000/- =(Rs. 25,000 +

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Rs. 15,42,000/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company. The learned advocate for the respondent No.1/insurance company is to deposit the remaining balance amount along with interest before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

14. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the respondent no.1 to 4/claimants in equal share as mentioned in the award passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, 4th Court, Paschim Medinipur in MAC Case No. 8/2019, on proof of proper identification of the respondent nos.1 to 4/claimants subject to payment of ad valorem Court's fees within four weeks.
15. The instant appeal and the connected COT 30 of 2023 is disposed of accordingly.
16. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
17. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)