

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**CAN 1 of 2023
with
CAN 2 of 2024
in
F.M.A 861 of 2024
National Insurance Co. Ltd.
-Vs-
Manika Rani Das & Ors.**

For the Appellant : Mr. Saibalendu Bhowmick

For the Respondents : Mr. Amal Ranjan Roy
]

Heard & 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. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
3. The instant appeal had been filed against the judgment and award dated 06.09.2023 passed by the Learned Additional District Judge, Motor

Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 47 of 2022.

4. Four claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge, Fast Track 1st Court, Tamluk Purba Medinipur MACC Case No. 47 of 2022 claiming an award of Rs. 10,00,000/- as well as interest payable with costs due to the death of the victim in a road traffic accident on 02/11/2021 at about 8:30 am.
5. The offending vehicle being a Tata Indica bearing Registration No. WB-30G/0468 hit the victim in a rash and negligent manner while he was riding his motor cycle.
6. The victim was taken to Contai S.D. Hospital and then transferred to Merry Nursing Home and was then taken to Purba Medinipur District Hospital, where he passed away on 04.11.2021.
7. On the basis of a written complain, Marishda PS Case No. 282/21 was instituted on 15/11/21 against the offending vehicle.
8. Though owner of the offending vehicle, did not contest and the case proceeded ex-parte against him.
9. The respondent, National Insurance Co. Ltd. contested the aforesaid MAC case.
10. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences directed the insurance company to pay Rs. 19,08,000/- with an interest payable at 6% per annum.

11. The Learned Advocate representing the Appellant submitted that the driver of the offending vehicle did not possess any driving licence. The income of the victim was disputed since he was not a professional and was not entitled to the computation of any wages as applicable under the Minimum Wages Act. The age of the victim should not be accepted in view of the Aadhar Card and the multiplier should be '13' instead of '15' since the age of the victim was 46 years at the relevant time as referred through the evidence on record submitted by the claimants.
12. The learned Advocate representing the respondents submitted that the Tribunal did not apply the rate of wages in consonance of the Minimum Wages Act. The post mortem report under no circumstances would determine the age of the victim and the penal interest should not have been granted by the learned Tribunal.
13. Considered the rival contention of the learned Advocates representing the respective parties.
14. Since the occurrence of the accident, involvement of the offending vehicle, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of rectifying the compensation awarded in the following manner.
15. The learned Tribunal in the impugned judgment and order observed as follows:-

"Now, one must remember that in this claim application the claimants have stated that the deceased was engaged in the work as a

Teacher of Music and he was good artist of 'Loko Sangit' and was earning Rs.15,000/- per month and during the course of the oral evidences of the P.W. 1, some documents showing the required qualification to perform such kind of work have been produced in this regard. One must appreciate the entire documents like the Exts.-11 to 14 which clearly demonstrate the qualification of the said deceased with regard to his avocation in life. One must also appreciate that merely by perusing the said documents one cannot come to a definite conclusion that the amount as claimed to be the monthly income of the deceased was exactly Rs.15,000/-. One cannot lose sight of the fact that the said deceased was an able bodied person who was sustaining the life of the other members of the family which included his wife, minor son, major son and the mother.

Now, if the parameter of the minimum wages in the State of West Bengal applicable for the period of July to December, 2021 is considered for the Zone 'B' areas, one would find that the monthly wages for a semi-skilled worker was in the proximate region of Rs.8,500/-. Now the evidence of the P.W.-2 in the cross-examination shows that he was very well aware of the fact that the deceased used to sing 'Lokgiti' which fact further fortified the Exts.-11 to 14 and also shows that the deceased was in fact performing the qualities which he had and is thus expected to make an income which was sustaining the lives of his family members. Thus, considering all aspects this Tribunal

would consider the monthly income of the deceased to the extent of Rs.9,000/- which would be rational in respect of his qualifications.

Thus, this Tribunal would consider the monthly income of the deceased as Rs.9,000/- just before his death.

Thus, in this case, the amount of the yearly earnings of the victim should be considered as Rs.1,08,000/-".

16. The aforesaid observation of the learned Tribunal is justified and reasonable and should not be interfered with. Moreover, with regard to the multiplier pertaining to the age of the victim the learned Tribunal observed as follows:-

"It has also come to light that the deceased was 36+ years at the time of his death. The age of the deceased was noted as 46 years in the P.M. Report but actually the exact age of the deceased was clearly evident from the Ext.-7 which shows that the exact age of the deceased was 36+ years. He left behind his wife, minor son, a major son and also the mother as the only legal heirs. He was self employed and was below 40 years. Now, from the documents marked as Exhibit 7 it is seen that the victim was about 36+ years at the time of his death. One must also remember that since he has completed the age of 36 years, for the purpose of calculating the multiplier he should be considered in the bracket of 36 to 40 years".

17. The aforesaid explanation is justified and this Court is not inclined to interfere with the same.

18. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.², the impugned award of Rs. 19,08,000/- is modified as follows incorporating the multiplier to be '14'.

Monthly Income	Rs. 9,000/-
	X 12
Annual Income	Rs. 1,08,000/-
Less : 1/4 th for personal expenses	Rs. 27,000/-

	Rs. 81,000/-
Add : Future Prospects(25%)	Rs. 20,250/-

	Rs. 1,01,250/-
Multiplier '14'	X 14
	Rs. 14,17,500/-
Add : General Damages	Rs. 77,000/-

Total Entitlement	Rs. 14,94,500/-

19. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.21,36,486/- as

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

per challan filed by the learned advocate representing the appellant/insurance company.

20. The Respondent/claimant is entitled to receive the amount of Rs. 14,94,500/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
21. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the respondents/claimants as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 47 of 2022 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.
22. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in

favour of the appellant/insurance company for the accounts of the insurance company.

23. The instant appeal is disposed of accordingly.
24. The pending applications, if any, stands disposed of.
25. 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. (Ct.)