

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1435 of 2024

Radhika Mal Majhi & Ors.
vs.
National Insurance Company Ltd. & Anr.

Mr. Amit Ranjan Roy ... for the appellants/claimants.

Mr. Sanjay Paul
... for the respondent no. 1/Insurance Co.

Heard on: 08.01.2025.

Judgment on: 08.01.2025.

Ananya Bandyopadhyay, J:-

1. Both the Learned Advocates representing the appellants/claimants as well as respondent no.1/Insurance Company are present.
2. The instant appeal had been filed against the judgment and order dated 9th July, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal, cum Additional District and Sessions Judge, 3rd Court, Paschim Medinipur in MAC Case No. 705 of 2021.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of an accident which occurred on 15.10.2021 at about 8.00 p.m. whereby the victim returning from his relative's house during Durga Puja was hit by the offending vehicle bearing Registration No. WB-34AH-0497 driven rashly and negligently, resulting in the death of the victim at Kalinga Hospital at Bhubaneswar on 20.10.2021.
4. The Learned Advocate representing the appellants/claimants submitted that the victim during his life time earned a sum ranging from Rs. 12,000 to 14,000/- per month. The victim was issued a trade

licence through the office of the District Panchayat Office which endorsed the income of the victim to be within the range of 12,000/- to 14,000/- as a vegetable vendor, however, the Learned Tribunal disregarded his avocation and considered the monthly income of the victim to be Rs. 6000/- per month.

- 5. The Learned Advocate representing the respondent no. 1/Insurance Company disputed the contention of the Learned Advocate representing the appellants/claimants stating that in absence of oral and documentary evidence to substantiate the income of the victim to be within Rs. 12,000/- to 14,000/- per month, the learned Tribunal had correctly considered the monthly income to be Rs. 6000/- per month.
- 6. The Learned Advocate for the respondent No.1/insurance company did not dispute the occurrence of the accident and the ancillary issues concerning the driving licence, disability certificate, the involvement of the offending vehicle, the route permit, the insurance policy, etc.
- 7. Since, the dispute raised in the instant appeal is restricted only to the extent of the monthly income of the victim, this Court considering the fiscal index at the relevant time of the accident, computed the monthly income to be Rs. 7,500/-and the same will not be improbable for the year 2021.
- 8. 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. 14,29,882/- is modified as follows:

Monthly Income	Rs. 7500/-
Annual Income	
Future Prospect to be added(40%)	Rs. 90,000/-
	Rs. 36,000/-
	Rs. 1,26,000/-

1 2017(4)TAC 673(S.C)

2 (2009) 6 SC 121

1/4 th Deduction Personal Expenses	Rs. 31,500/- ----- Rs. 94,500/-
Multiplier to be "16"	X 16 ----- Rs. 15,12,000/-
General Damages	Rs. 77,000/- -----
Medical Expenses	Rs. 15,89,000/- Rs. 1,50,282/- -----
Less Award	Rs. 17,89,282/- Rs. 14,69,882/- -----
Entitlement	Rs. 3,19,400/-

9. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 14,69,882/-. The appellants/claimants are entitled to a sum of Rs. 3,19,400/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 21.12.2021 till the date of its actual realization.
10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 3,19,400/- 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 six weeks from the date of passing of this order .
11. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal, cum Additional District and Sessions Judge, 3rd Court, Paschim Medinipur in M.A.C. Case No. 705 of 2021 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.
12. The instant appeal is disposed of accordingly.
13. The pending applications if any stands disposed of.

14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)