

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 102 of 2024

**Debasish Naskar
Versus**

Bajaj Allianz General Insurance Company Ltd. & Anr.

For the Appellants : Mr. Sanat Kumar Mallick

For the Respondent No.1/
Insurance co. : Ms. Sucharita Paul

Heard on & Judgment on : 6th May, 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 the respective parties are present.
3. The claimant being the victim of the accident filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Alipore being MAC Case No. 47/2016, claiming an award of Rs. 8,00,000/- with an interest payable at 9% from

the date of filing of the case till realization whereby the aforesaid suffered from grievous injuries due to a road traffic accident on 09.02.2016 at about 9.00 a.m. The offending vehicle, a private car bearing Registration No.WB-06F/1577 hit the aforesaid deceased riding on his bicycle in a rash and negligent manner while he was riding through Judges Court Road. Consequently, the victim sustained grievous injuries was admitted at Woodlands Hospital, Birbhum. He was shifted to ESI Hospital where he was admitted from 09.02.2016 to 07.04.2016. Subsequently, based on a complaint, Alipore P.S. Case No. 50/16 dated 09.02.2015 was instituted against the driver of the offending vehicle as aforesaid.

4. The owner of the offending vehicle appeared but did not contest the case subsequently before the Court of Motor Accident Claims Tribunal, Alipore in MAC Case No. 47/2016. The case was heard ex parte owner of the vehicle. The respondent, the Bajaj Allianz General Insurance Co. Ltd. contested the aforesaid MAC case.
5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 4,52,340/- as well as an interest of 6% from the date of filing the case till the date of realization payable by Bajaj Allianz General Insurance Co. Ltd.

6. Learned Advocate representing the appellants/claimants submitted as follows:

a. "Increment of salary" was not a promotional salary. Due to the injuries sustained by the appellant/claimant arising out of the road traffic accident the appellant/claimant had lost his spleen which was the most essential part of human body, which had been mentioned in his Discharge Certificate (Ext.5) and the claimant had lost his promotional scope of his service.

b. As per the deposition of Dr. Binoti Das P.W. 3 issued a percentage of Disablement Certificate (Ext. No.3) in favour of the claimant however the Learned Tribunal held his disability at 15% instead of 35%.

c. The aspect of future prospect had not been considered. At the time of the accident the claimant was aged about 30 years which was below 40 years. Thus, he was entitled to 50% instead of 40% of his annual salary as per National Insurance Company Ltd. Vs. Pranay Shetty & Anr.¹

7. The learned Advocate representing the respondent No.1/Insurance Company submitted that the learned Tribunal had considered the necessary aspects to grant just compensation.

8. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance

policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of issues agitated by the respective parties.

9. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr² and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.³ The impugned award of Rs. 4,52,340/- is modified as follows:

Monthly Income	Rs. 9000/-
Future Prospect to be added(40%)	Rs. 3600/-
	Rs. 12,600/-
Multiplier to be "17"	X 17
	Rs. 2,14,200/-
Disability loss of earning capacity (30%)	X 30%
	Rs. 6,4,260/-
Annual income	X 12
	Rs. 7,71,120/-
Medical Expense	Rs. 6,780/-
Pain and suffering	Rs. 50,000/-
Transportation Cost	Rs. 10,000/-
	Rs. 8,37,900/-
Less	Rs. 4,52,340/-
Entitlement	
	Rs. 3,85,560/-

10. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 4,52,340/- The appellant/claimant is entitled to a sum of Rs. 3,85,560/- along with interest at the rate of 6% per annum to be paid from the date of

¹ 2017(4)TAC 673 (S.C.)

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

³ (2009) 6 SC 121

filing of the claim application i.e. 08.07.2016 till the date of realization.

11. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 3,85,560/- along with interest as aforesaid before the office of the learned Registrar General High Court at Calcutta within six weeks from the date of passing of this order.
12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter, disburse the same to the present appellant/claimant as mentioned in the impugned judgment and order passed by the learned Judge, 3rd Additional District Judges Court cum Motor Accident Claims Tribunal at Alipore South 24 Parganas in M.A.C. Case No. 47 of 2016 on proof of proper identification of the appellant /claimant subject to payment of ad valorem Court's fees within four weeks.
13. The instant appeal is disposed of accordingly.
14. The pending applications, if any, stands disposed of.
15. The TCR be sent down to the concerned Tribunal forthwith.
16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

