

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1509 of 2024

**Enamul Mondal
Versus
Shriram General Insurance Company Ltd. & Anr.**

For the Appellant : Mr. Muktakesh Das

For the Respondent No.1/
Insurance co. : Mr. Rajesh Singh.

Heard & Judgment on : 18th March, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 19th September, 2024 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District & Sessions Judge, Tehatta, Nadia in M.A.C. Case No. 16 of 2017.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant for sustaining injuries out of an accident which occurred on 12th June, 2017 at about 12.30 hours

on Nazirpur Karimpur road in front on the house of Ichharuddin Sah at Mathurapur with involvement of the offending vehicle being a truck bearing registration no. WB-51/9956 which resulted in an amputation of his right hand from the shoulder suffering total permanent disablement to the extent of 90% as assessed by the Medical Board vide marked as Ext. 9.

4. Learned Advocate representing the appellant/claimant submitted that the accident occurred in the year 2017 and the Learned Tribunal disregarding the monthly income of the victim to have been Rs. 10,000/- per month considered Rs. 4000/- to be the monthly income of the victim. More-over, considering the age of the victim the component of future prospect to the extent of 40% was not granted since the victim had suffered 90% of permanent disablement. The Learned Tribunal did not grant any kind of compensation towards non-pecuniary damages. The Learned Tribunal further did not grant any component towards loss of marriage expectancy. More-over, the interest at the rate of 4% per annum was inadequate.
5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the victim/claimant to have owned a mobile shop, however, did not produce any oral or documentary evidence with regard to his claim of earning of Rs. 10,000/-. He further stated that the victim/claimant married after

the occurrence of the accident and also gave birth to a child which was in dire contradiction to the claim. The Learned Advocate representing the appellant/claimant seeking compensation on account of his future married prospect was a subterfuge.

6. 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 agitated in the memo of appeal. Since the accident occurred in the year 2017 in the absence of oral and documentary evidence, the notional income could be assessed at the rate of Rs. 5000/- per month. The future prospect with regard to the age of the victim should have been granted to the extent of 40%. The Learned Tribunal erroneously have not granted any compensation towards non pecuniary damages. The victim having suffered amputation of his right hand from the shoulder must have suffered immense pain and suffering this Court is inclined to grant a sum of Rs. 2,00,000/- towards pain and suffering. Since the victim has married after sustaining the accident, his expectancy towards future marriage is obliterated. Therefore, he is not entitled to any sum of compensation to that effect. The

Learned Tribunal had granted an interest to be paid at the rate of 4% per annum which is enhanced to 6% per annum.

7. 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. 8,26,366/- is modified as follows:

Monthly Income	Rs. 5000/-
Annual Income	Rs. 60,000/-
Future Prospect to be added(40%)	Rs. 24,000/-
	<u>Rs. 84,000/-</u>
	X 17
Multiplier to be "17"	<u>Rs. 14,28,000/-</u>
Disability (90%)	Rs. 12,85,200/-
Pain and suffering	Rs. 2,00,000/-
	<u>Rs. 14,85,200/-</u>
Medical Expenses	Rs. 81,159/-
	<u>Rs. 10,867/-</u>
	<u>Rs. 15,77,246/-</u>
Less Award	Rs. 8,26,366/-
Entitlement	<u>Rs. 7,50,880/-</u>

8. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 8,26,366/-. The appellant/claimant are entitled to a sum of Rs. 7,50,880/- along interest 6% per annum to be paid from the date of filing of the claim application i.e. 09.02.2016 till the date of its actual realization. The appellant/claimant is further entitled to an interest of 2% per

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

² (2009) 6 SC 121

annum from the date of filing of the claim application till the date of realization of Rs. 8,26,366/-.

9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 7,50,880/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .
10. 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 award passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District & Sessions Judge, Tehatta, Nadia in M.A.C. Case No. 16 of 2017 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court's fees.
11. The instant appeal is disposed of accordingly.
12. The pending applications if any stands disposed of.
13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)