

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 345 of 2024

**Biman Dhara @ Biman Kumar Dhara (since deceased) being
substituted by Minakshi Dhara & Ors.**

-Vs-

United India Insurance Co. Ltd. & Ors.

For the Appellants : Mr. Amit Ranjan Roy

For the Respondents/
Insurance Company : Mr. Parimal Kumar Pahari

Heard & Judgment on : 06.05.2025

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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 instant appeal had been filed against the judgment and award dated 28.01.2020 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 104 of 2010/105 of 2009.
4. The claimant being the victim filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District

Judge, Purba Mednipur being MAC Case No.104/2010/105 of 2009, claiming an award of Rs. 4,00,000/- for medical expenditure, future medical expenditure, mental shock, loss of income and future income as well expenses of attendances, interest and other costs whereby the aforesaid deceased lost proper function of his right hand, head and left eye due to a road traffic accident on 23.01.2009 at about 9:30 pm. The offending vehicle, being a truck bearing Registration No. WB29/4214 hit the aforesaid deceased travelling in an ambassador car bearing Registration no. WMF-2405, owned by his friend and relative in a rash and negligent manner. Consequently, the victim sustained grievous injuries was admitted to District Hospital Purba Mednipur at Tamluk and thereafter Health point Nursing Home, Kolkata where he was treated from 24.01.09 to 31.01.09. He was further treated by other medical practitioners and in other institutions. He became permanently disabled to the extent of 50%. Subsequently, based on a complaint Tamluk P.S. Case No. 35/09 dated 28.01.09 was instituted against the driver of the offending vehicle as aforesaid.

5. The owner of the offending vehicle appeared in this case and filed a written statement stating that the truck was under valid coverage of United Insurance Company Ltd. at the time of the accident. The owner of the ambassador appeared before Court and filed a written statement stating that the claimant was a bona fide traveller of the ambassador and at the date of the alleged accident the said ambassador was under the valid coverage under National Insurance Company Ltd.

6. The respondents, United Insurance Company Ltd. and National Insurance Company Ltd. contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs.2,99,000/- as well as an interest of 6% from the date of filing the case, that is from 24/03/09. The owner of the truck, OP No. 1 and United India Insurance Company, OP No. 3 were jointly and severally liable to pay the amount of compensation.
8. The Learned Advocate representing the Appellants/claimants submitted as follows:-
 - a. The disciplinary certificate has not been properly analysed and that his disability prevented him from doing his job. This contention is supported by PW-1 and PW-2.
 - b. The learned Tribunal did not under consider the pecuniary and non-pecuniary loss of the appellant properly.
 - c. Future prospect, future treatment, cost of attendant from the date of accident till he remained alive, passage and diet money, pain and suffering and mental agony of the victim.
 - d. The multiplier ought to be 15 instead of 11.
9. The learned Advocate representing the respondents/Insurance Company submitted that disability certificate was temporary in nature as mentioned in exhibit-8 with subsequent changes to have resulted in future improvement in the case to be reviewed after five years. It was further submitted that the claimants did not produce any document towards

medical expenditure as well as his income to be Rs.8,500/- per month working as a Manager of B.S. Tractors Private Limited at Sridharpur. Moreover, the claimants did not produce any document before the learned Tribunal to prove that he had incurred Rs.1,50,000/- for the purpose of his treatment.

10. Heard the submission of the learned advocates representing the respective parties.

11. Since the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the respondents/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues. The learned Tribunal had rightly assessed the yearly income of the victim in absence of appropriate evidence considering the percentage of disability. However, the claimant is entitled to a compensation towards future prospect and the multiplier with regard to his age should have been assessed to be 13 instead of 11. The claimant is entitled to enhance the sum of Rs.25,000/- from Rs.5,000/- granted by the learned Tribunal towards pain and suffering. The sum of Rs.30,000/- granted by the learned Tribunal towards medical expenditure against medical bills though there had been documents on record to substantiate his medical treatment, this Court is not inclined to interfere with the sum of Rs.30,000/- as aforesaid.

12. 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. 2,99,000/- is modified as follows:

Annual Income	Rs.48,000 /-
Future Prospects (25%)	Rs. 12,000/-
	Rs.60,000/-
Multiplier '13"	X 13
	Rs. 7,80,000/-
Disability 40%	40%
	Rs.3,12,000/-
Medial Expenditure	Rs. 30,000/-
Pain & Suffering	Rs.25,000/-
	Rs. 3,67,000/-
Award Receive	Rs. 2,99,000/-
Balance	Rs. 68,000/-

13. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants has withdrawn a sum of Rs. 2,99,000/-. The appellants/claimants are entitled to a further sum of Rs. 68,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

14. The Learned Advocate for the respondents/insurance companies is to deposit the balance sum of Rs. 68,000/- 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 .
15. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the appellants/claimants as mentioned in the award passed by the learned Additional District Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 104 of 2010/105 of 2009 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.
16. The instant appeal is disposed of accordingly.
17. The pending applications, if any, stands disposed of.
18. 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.)