

Form No. J (2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

**F.M.A. 279 of 2021
With
C.O.T. 4 of 2021**

**HDFC ERGO General Insurance Co. Ltd.
Vs.
Prarthana Mahaldar & Ors.**

For the Appellant/Insurance Company : Mr. Rajesh Singh

For the Respondents/Claimants : Mr. Jayanta Banerjee,
Ms. Purnima Basu Roy

Heard & Judgment on : 15.07.2025

Ananya Bandyopadhyay, J.:-

1. The Learned Advocates representing the appellant/insurance company as well as respondents/claimants are present.
2. The instant appeal had been filed against the judgment dated 13th August, 2020 passed by the Learned Judge, Motor Accident Claims Tribunal, Katwa, Purba Bardhaman in MAC Case No. 100 of 2014.
3. An application under Section 166 of the M.V. Act had been filed by the claimants on account of the death of the victim in an

accident which occurred on December 23, 2013 at about 7.20 p.m. at Katwa-Kalna Road near Jagadanandapur village with the involvement of the offending vehicle being a tractor bearing registration no. WB/41/G/4981 which approaching at an exceeding speed rashly and negligently collided with the tractor being driven by the victim who instantaneously fell on the ground and received injuries. Thereafter, he was shifted to S.D. Hospital for treatment, wherein he was declared to have expired.

4. The Learned Advocate representing the appellant/insurance company submitted that the offending vehicle being the tractor as aforesaid had not been involved in the occurrence of the accident and had been falsely implicated for the purpose of obtaining the compensation. The complaint was lodged after five months from the date of occurrence of the accident. The eyewitness who appeared before the Learned Tribunal to adduce evidence was also cited as a witness in the Surathal report who at the time of the inquest being conducted did not reveal the number of the offending vehicle. Moreover, with regard to the age of the victim to be 37 at the relevant point of time, the Learned Tribunal erroneously applied the multiplier '16' instead of '15'. The number of claimants being 3, the Learned Tribunal erred in deducting $1/4^{\text{th}}$ towards personal expenditure instead of $1/3^{\text{rd}}$.

Moreover, the Income Tax Return did not validly indicate the yearly income of the victim.

5. Considering the submissions putforth by the Learned advocate representing the appellant/insurance company, the same should be exonerated from the liability to pay the compensation awarded.
6. The Learned Advocate representing the respondents/claimants submitted to have filed a cross-objection being COT No.4 of 2021 claiming that the Learned tribunal did not consider the component of future prospect as well as an enhanced amount of general damages.
7. Since the occurrence of the accident, insurance policy, the driving licence, route permit etc and other ancillary issues are not disputed by the Learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of the above-mentioned issue.
8. Considered the rival contention of the respective parties.
9. The documents marked as Exhibits -1 and 2 indicated that the reasons for delay in filing the complaint, as the claimants being the family members were engaged in funeral rites and rituals being depressed and disheartened at the demise of the victim. The delay mentioned therein had been properly explained. The

evidence of the eyewitness before the Learned Tribunal who had witnessed the occurrence of the accident stated the number of the offending vehicle. He also stated to have witnessed the process of inquest and had signed the inquest report at the hospital. He further stated that the registration number of the involved vehicle and the offending vehicle to be WB/41/G/4981. The evidence of the eyewitness could not be negated at this juncture, since the charge-sheet filed by the Investigating Officer marked as Exhibit – 3 mentioned the seizure of the aforesaid tractor as well as prima facie narrated the accident to have occurred with the involvement of the offending vehicle.

10. The Learned Advocate representing the Appellant/Insurance Company had submitted, the victim in accordance to the document marked as Exhibit – 13 died out of cardio respiratory failure. The P.M. report did mention the injuries sustained by the victim in the brain which could ultimately result in the failure of the cardio respiratory organ and it could not be stated that the victim died out of cardio respiratory failure in normal condition since the injuries had also been specified in the P.M. report.
11. Considering the age of the victim to be '37' years, the multiplier should have been considered to be '15' and on the basis of the number of claimants to be 3, the deduction should

have been $1/3^{\text{rd}}$ instead of $1/4^{\text{th}}$. Moreover, the element of future prospect should be 40% and general damages in the changed circumstances with lapse of time should be Rs.84,000/-

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. 29,84,224/- is modified as follows:

Annual Income	Rs.2,69,836/-
Less : $1/3^{\text{rd}}$ for personal expenses	Rs. 89,945/-
	Rs.1,79,891/-
Add : 40% further prospect	Rs. 71,956/-
	Rs.2,51,847/-
Multiplier '15'	X 15
	Rs.37,77,705/-
Add : General Damages	Rs. 84, 000/-
Total	Rs.38,61,705/-
Less : Principal awarded by tribunal	Rs.29,84,224/-
	Rs.8,77,481/-

13. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.42,37,104/- as per challan filed by the Learned advocate representing the appellant/insurance company.

¹ 2017(4)TAC 673(S.C)

14. The Learned Tribunal had awarded the compensation to the claimants of Rs. 29,84,224/- along with interest at the rate of 6% per annum from the date of filing of the application till the date of realisation. The respondents/claimants are entitled to a sum of Rs. 38,61,705/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.
15. The Learned Advocate for the appellant/insurance company is to deposit the balance sum of Rs. 8,77,481/- 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 .
16. The Office of the Learned Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the entire awarded amount so deposited with accrued interest directly Bank accounts of respondents/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal, Katwa, Purba Bardhaman in M.A.C. Case No. 100 of 2014 on proof of proper identification of the respondents/claimants subject to payment of

ad valorem Court's fees and refund the balance amount, if any, along with accrued interest through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the Insurance Company. The Office of the Learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their Bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

17. TCR to be transmitted to the Learned tribunal at the cost of the special messenger to be borne by the Learned advocate representing the respondents/claimants.
18. The instant appeal is disposed of accordingly.
19. The pending applications, if any, stands disposed of.
20. 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.)