IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL APPELLATE JURISDICTION)
APPELLATE SIDE

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

FMAT (MV) 7 of 2023

Shobha Roy & Ors.

Versus

The Oriental Insurance Co. Ltd. & Anr.

For the Appellants	:	Mr. Subir Banerjee Mr. Abhijit Raha
For the Respondent/Insurance Co.	:	Mr. Rishin Chakraborty
Heard on	:	11.03.2025
Judgment on	:	13.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. Being aggrieved by and dissatisfied with the judgment and award dated 17th December, 2021 passed by learned Motor Accident claim Tribunal, 3rd Court Jalpaiguri in MAC case no. 51 of 2019 present Appeal has been preferred.

2. Brief background of the instant claim application is that on 15.07.2018 at about 6.00 pm, when the victim Manoj Kumar Roy were proceeding towards Batasi side by riding a Motor Cycle along with friend, at that time one vehicle bearing registration no. BR 11M 0266(bus) which was proceeding at a high speed and also in a rash and negligent manner had dashed victim's Motor Cycle on NH 31C near Kelabari and due to such accident, victim sustained fatal injury and died at the spot.

3. On the basis of such incident, Kharibari P.S. Case no 145 of 2018 dated 18.07.2018 was started against the driver of the said offending vehicle under section 279/304A of Indian Penal Code. Claimants' specific case is that the accident took place due to a rash, reckless and negligent driving by the driver of the offending vehicle, bearing registration no. BR 11M 0266 (bus) and accordingly petitioners prayed for compensation before the Tribunal below. After considering the claim application and the written statement filed by opposite party no.2/oriental insurance company Tribunal below framed eight issues. During trial claimants/appellants brought two witnesses and they have also filed and proved documents which are marked exhibit 1 to 9. On the contrary the opposite party no.2 did not examine any witness to contradict the evidence adduced by the claimants. Learned tribunal below after considering the evidence both oral and documentary and after considering the submissions made by both the parties, awarded a sum of Rs. 3,54,000/- in favour of the claimants and directed the insurer offending vehicle namely oriental insurance company Ltd to pay the said amount in favour of two petitioners.

4. Being aggrieved by the said judgment and award the appellants/ claimants preferred present appeal on the following grounds:-

(i) That the exhibited document clearly suggests that the victim passed the veterinary examination and when he died he was designated as trainee cum assistant of veterinary, having an income of Rs. 10,000/- per month, which the court below ignored and calculated the compensation amount on the basis of notional income of Rs. 3000/- per month.

(ii) Learned Tribunal has erred in law and fact in not granting future prospect at the rate of 40% in accordance with the age of deceased, in terms of the judgment of ***National Insurance company ltd. Vs. Pranay Shetty and others*** reported in **(2017) 16 SCC 680.**

(iii) The Tribunal also erred in not granting additional amount of 207. In addition to general damage amount in view of the judgment of **Pranay Shetty (Supra)** and as such the general damage amount should be Rs.36,000/- instead of Rs. 30,000/- since more than 7 years have already been passed from the date of delivery of the judgment in the **Pranay Shetty** case.

(iv) Learned Tribunal erred in law and in fact in not awarding any interest on the awarded amount, but in view of the law of the land as settled and also in view of the provision of section 171 of MV Act the Tribunal was duty bound to award interest on the compensation amount from the date of filing the claim application till the payment made before the Tribunal.

5. Mr. Chakraborty learned counsel appearing on behalf of the Insurance company/OP contended that the Tribunal below has not committed any mistake in assessing the monthly income of the deceased victim as Rs. 3,000/- as notional income, since the victim was a student at the time of his death, having no independent income.

6. He further contended that learned Tribunal below was justified in not awarding any interest upon the awarded sum, as there was no latches on the part of the insurance company, in causing delay in disposal of the case and as such insurance company cannot be penalized to pay interest. Accordingly he contended that the instant appeal does not have any merit and is liable to be dismissed. In support of his contention he relied upon the judgment reported in 2023 ACJ 329 SC and 2023 ACJ 343 SC.

7. I have considered submissions made by both the parties.

8. As regards income of the victim at the time of accident, it appears that the victim was pursuing his studies and West Bengal Board of veterinary examination issued mark-sheet which has been marked as exhibit 9. There is nothing to show that the victim was actually earning Rs. 10,000/- per month as trainee cum assistant of veterinary. However, relying upon recent judicial pronouncements, I find that it would be appropriate that in the present case the notional income of the victim be taken as Rs. 6,000/- per month i.e. Rs. 72,000/- per annum.

9. Since the victim was pursuing his studies as future veterinary surgeon, The tribunal below has erred in law and in fact in not granting future prospect at the rate of 40% in accordance with the age of the victim in compliance with the direction made by the Apex Court in **Pranay Shetty's Case (Supra)**. Moreover, in considering the direction made in the said judgment, the claimant appellants are also entitled to get Rs. 6,000/- extra amount towards general damages in addition to Rs. 30,000/- as said mount likely to increase of 10% in every three years, and since more than 7 years have already been passed from the delivery of said judgment by the Apex Court.

10. I am also of the view that though under section 171 of the MV Act it is not mandatory for the Tribunal to award interest on the compensation amount, but considering the fact that the relevant portion of the Motor vehicles Act has been enacted as a social welfare legislation and to protect the interest of the victim or victims dependents, I am of the view that the Tribunal below ought to have awarded interest upon the awarded compensation.

11. In such view of the matter amount of compensation is to be calculated as follows:-

Annual income of the victim (6,000X 12) = Rs.72000

40% future prospect = Rs.28,800/-

Total income Rs.1,00,800/-

Less half towards of the personal expenses 50,400/-

Income Rs.50,400/-

Apply multiplier 18 (age being 23 years)

Rs.9, 07,200/-

General damages Rs.36,000/-

Total compensation amount Rs.9,43,200/-

Insurance company already paid Rs. 3,54,000/-

Amount to be paid by OP No.2 Rs.5,89,200/-

12. In view of aforesaid discussion the present appeal being **FMAT (MV) 7 of 2023** is hereby disposed of directing the insurance company/OP No.2 to deposit a sum of Rs. 5,89,200/- along with interest at the rate of 6% per annum from the date of the filing of the application i.e. from 20.02.2019 till the date of complete realization, within a period of 6 weeks from the date of communication of this order before Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri and the disbursement of the compensation amount shall be made to the claimants/appellants in the mode and manner as prescribed by the tribunal below in the judgment impugned. In case of non-payment of aforesaid awarded amount within stipulated period, petitioner will be at liberty to realize said amount through appropriate execution proceeding.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)