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) 11 of 2023

Shipu Hazra

Versus

Reliance General Insurance Co. Ltd. & Ors.

For the Appellants	:	Mr. Subir Banerjee Mr. Abhijit Raha
For the Respondent/Insurance Co.	:	Mr. Rishin Chakraborty
For the Respondent No.1	:	Mr. Partha Bhowmik
Heard on	:	11.03.2025
Judgment on	:	12.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The instant appeal has been preferred by the appellants/claimants, being aggrieved by judgment and award dated 10th day of December, 2021 passed by the MAC Tribunal 3rd Court Jalpaiguri in MAC Case no. 218 of

2017. The brief backdrop for the instant claim is that on 01.05.2017 at about 21:35 hrs, when the victim Shrestha Hazra was returning from Siliguri towards Jalpaiguri by a vehicle bearing no. WB 71B 0373 as on duty khalasi /labour at that time the said vehicle was being driven in very high speed and also in rash and negligent manner and as a result the driver had no control over the said vehicle and at the same time one truck bearing registration WB 59B 2767 was also proceeding at the same direction ahead of victim's vehicle, but the said truck driver negligently dead stopped his vehicle before victim's vehicle without any signal and indication. As a result of which driver of the victim's vehicles dashed the backside of the truck and for which victim sustained fatal injury. It is alleged that the accident occurred due to rash and negligent driving on the part of the drivers of both the vehicles. Thereafter Raiganj P.S. case no. 107 of 2017 dated 05.05.2017 was started against the driver of both the vehicles.

2. Considering the rival pleadings the Tribunal below framed eight issues. The claimants/appellants adduced evidence in support of their contention and proved documents which were marked exhibit 1 to 11. On the contrary the insurance company contested the claim application by filing written statement but did not examine any witness on their behalf. Ld. Tribunal below after hearing submissions made by both the parties and considering documentary and oral evidence awarded a sum of Rs. 3,36,000/- towards compensation, along with 6% interest on the awarded amount, from the date of filing of the application till the date of realization.

3. Being aggrieved by the said judgment and award the appellants/claimant preferred the present appeal on the following grounds

- **(i)** that the Tribunal below erroneously believed that the notional income of the victim was Rs. 3,000/- per month.
- **(ii)** The Tribunal erred in law in applying multiplier 17 instead of Multiplier 18 in terms of ***Sarala Verma and others Vs. Delhi Transport Corporation*** reported in **2009 3 WBLR (SC) 700**
- **(iii)** Ld. Tribunal granted future prospect in terms of judgment deliver in **Sarala Verma's Case (Supra)** at the rate of 40% but the tribunal below has not added Rs. 6,000/- with the general damages of Rs. 30,000/-.
- **(iv)** Tribunal below has also not granted interest at the rate of 9% on the awarded sum, from the date of the filing of the application.

4. Ld. Counsel appearing on behalf of the respondents who are the insurer of two vehicles contended that Tribunal rightly assessed the monthly income of the victim at Rs. 3,000/-towards notional income, because the claimants failed to prove that victim used to earn Rs. 9,000/- per month. He further contended that the Tribunal already awarded the interest at the rate of 6% per annum and the claim of the appellants for granting interest at the rate of 9% per annum is absolutely baseless as the insurance company had no latches or they have not caused delay in the proceeding. Accordingly learned Counsel for the appellants have prayed for dismissal of the appeal.

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

6. Now so far as victim's income is concerned the claimants /appellants case is that at the time of death the deceased used to earn Rs. 9,000/- per month as an employee of Louis Bakery confectionery Pvt. Ltd. During the deposition of PW1 who is the mother of the deceased also stated that victim used to earn Rs. 9,000/- per month from his employer as a khalasi and the salary certificate for the month March, 2017 and April, 2017 were exhibited as exhibit No. 11. However Tribunal below did not rely upon said exhibit 11, on the ground that the owner of Louis Bakery confectionery Pvt. Ltd. was not examined to prove the document

7. In this context it appears from the FIR that it has been stated that the victim was an employee of Louis Bakery Confectionery Pvt. Ltd. Accordingly it is highly probable that victim at least used to earn Rs. 200/- per day at an average as khalasi (Labour) and for which the tribunal below ought to have considered annual income of the victim as Rs. 72,000/-.

8. Moreover, in view of **Pranay Shetty's Judgment (Supra)** the claimant is entitled to get 40% towards future prospect as the age of the victim at the time of his death was only 23 years. I also find that claimants are entitled to get 6,000/- more towards general damages since more than 7 years have already been passed from the delivery of judgment by the Apex court and as such the general damage amount in the present case would be Rs. 34,800/- (28,800+6000/-). The Appellant's claim that multiplier in the present case would be 18 has not been disputed by the insurance companies.

9. I do not find any merit in the appellants contention for awarding 9% interest on the awarded sum since the insurance companies are not liable for causing delay in awarding compensation by the Tribunal below, so that they can be directed to pay higher rate of interest.

10. In such view of the matter, the computation of income should be as follows:-

Annual income of the victim Rs.72,000/-

40% future prospect Rs.28,800/-

Less half of the amount since the petitioner was a bachelor = 50,400/-

Multiplier 18 is applied = Rs.9,07,200/-

General damage Rs. 34,800/-

Total amount Rs. 9,42,200/-

The Insurance company has already paid the amount of Rs. 3,36,000/-

Total due is Rs. 6,06,200/-

11. In view of aforesaid discussion **FMAT (MV) 11 of 2023** is hereby disposed of directing both the insurance company to deposit Rs. 3,03,100/- each along with simple interest at the rate of 6% per annum from the date of filing of the case i.e. from 23.05.2017, before the Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri, within a period for 6 weeks from the date of communication of the order. The mode and the manner of disbursement shall be in terms of direction made in the impugned judgment. If the Respondent(s) failed to pay the said amount within stipulated period, the claimant will be at liberty to initiate execution proceeding in accordance with law.

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.)