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) 28 of 2024

Santa Mitra & Ors.

Versus

The New India Assurance Co. Ltd. & Anr.

For the Appellants	:	Mr. Gobinda Saha Mr. Tamal Kumar Sen Ms. Priyanka Dey Mr. Milan ch. Laskar
For the Respondent/Insurance Co.	:	Mr. Rishin Chakraborty
Heard on	:	11.03.2025
Judgment on	:	12.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. This appeal has been directed against the judgment and award dated 30th September, 2023 passed by MAC Tribunal, First Court Siliguri, in MAC Case no. 26(2) of 2015. In the instant appeal the appellant has prayed for enhancement of the compensation amount. The appellants herein as claimants being the wife minor son unmarried daughter and mother of the victim /deceased Ashoke @ Asoke Mitra (aged about 43 years) filed the instant claim case against the owner of the offending vehicle bearing No. WB 73 A 5257 and the insurer namely New Indian Assurance Company Limited, with a prayer for awarding compensation of Rs. 7,09,500/-, on account of the death of the victim/deceased Ashoke @ Asoke Mitra

2. It has been stated in the claim application that on 20.09.2011 victim faced a motor accident allegedly caused by the offending vehicle bearing registration no. WB 73 A -5257. In the context of said accident Siliguri P.S. Case 344 of 2012 dated 26.07.2012 under sections 279/338/304 A of the IPC was started. Petitioner/claimant brought three witnesses and they have also filed and proved documents which are marked exhibit 1 to 17. However, opposite party/insurer company only contested the claim case by filing written statement, but did not produce any oral evidence to contradict the claim of the Appellants. The owner of the offending vehicle did not contest the claim case.

3. By the impugned judgment dated 30th September, 2023 the Tribunal below has awarded a sum of Rs. 5,29,500/- in favor of appellants/claimants along with simple interest at the rate of 6% per annum from the date of filing of the claim case, till it's realization against opposite party no.2/ insurance company.

4. Being aggrieved by the impugned judgment and award, the learned Counsel for the appellant preferred the present appeal on the following grounds:-

(i) That the Tribunal below did not assess the actual future prospect which should be awarded at the rate 25%.

(ii) The Tribunal below applied wrong multiplier 13 instead and in place of 14, as the age of the victim was 44 years at the time of accidental death

(iii) The Tribunal below did not grant the actual general damages of Rs. 98,000/- instead and in place of Rs. 9,500/-

(iv) The ld. Tribunal was erred in deducting 1/3rd of the income towards personal expenses instead of 1/4th

(v) The Tribunal below did not grant the prevailing bank interest on the assessed compensation, from the date of filing of the claim application

(vi) The learned Tribunal below did not consider the medical bills of the victim amounting to Rs. 11,000/- which were marked as exhibit 15 and 16.

5. Accordingly the claimants/appellants have prayed for enhancement of the compensation amount.

6. The counsel appearing on behalf of the insurance company Mr. Chakraborty submits that the Tribunal rightly assessed the monthly income of the deceased as Rs. 5,000/-towards notional monthly income as has been stated in the claim application. Ld. Tribunal below was justified in not awarding future prospect as the directions made in ***National Insurance Company ltd. Vs. Pranay Shetty and another,*** **2017 ACJ 2700** was passed in 2017 but the claim application was filed in the year

2015 and as such said direction of the Apex Court has got no application in the present context.

7. He further submits that the court below was justified in taking multiplier as 13, while making the calculation, since in the post-portem report and death certificate, it has been stated that the age of the deceased was 47 years at the time of his death. He further contended that the general damage amount of Rs. 9,500/- has been correctly assessed by the tribunal below on the same ground that the direction in **Pranay Shetty's Case (Supra)** came into force long after filing the claim application. On the self same ground the Tribunal was also justified in deducting 1/3rd of the income towards personal expenses. Furthermore the Tribunal has already awarded the interest at the rate of 6% per annum from the date of filing, till final realization which is quite justified. He further contended that the claimants were not entitled to get medical expenses of Rs. 11,000/- as the same was not proved before the learned Tribunal below as per law, at the time of Trial. In support of his contention that the notional income assessed by the Tribunal is correct, he relied upon judgment of ***Mehmooda Bee and others Vs. National Insurance Company Ltd.,*** **2023 ACJ 329.**

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

9. The appellant has not disputed in the present Appeal at the time of hearing the monthly income of the victim. In support of the contention relating to user of multiplier 13, the contention of the Respondents is that the victim was aged about 47 years at the time of his death as reflected from post-portem report but the learned Counsel appearing on behalf of the claimants submit that the actual multiplier would be 14, since according to the voter identify card, the age of the victim at the time of his death was 43 years. Accordingly the multiplier would be 14.

10. It is not doubt true that in the medical paper and in the post-portem report, the age of the victim has been mentioned as 47 years but it is quit probable that the said age of the victim was recorded on the basis of the statement made by the persons who brought the dead body at the mortuary. On the contrary the age mentioned in the voter card can be regarded as more accurate, in the present context, since it is highly probable that it was prepared on the basis of the statement of the victim or his family members. Accordingly the Tribunal below was not justified in relying the age mentioned in post-portem report and thereby rejecting the age mentioned in the voter I Card.

11. However, I am not agreeable with the Respondent's contention that the claimants are not entitled to 25% towards future prospect and that the victim is entitled to get general damages of Rs. 9,500/- only and that the deduction of income shall be 1/3rd on the ground that the claim application was made in the year 2015, whereas the directions made in the **Pranay Shetty's Case (Supra)** became law of the land in the year 2017. This is because the law, which is laid down by a constitutional court or law as it is interpretated by the court, the judgment of the court will always be retrospective in nature, unless the judgment itself specifically states that the judgment will operate prospectively (Ref: Kanishk Sinha & another Vs. the State of W.B. & another [SLP (Criminal) No. 8609-8614 of 2024 dated 27th February, 2025].

12. It is also to be mentioned that the claimants/petitioners are entitled to get medical reimbursement irrespective of the fact whether the relevant medical documents have been marked as exhibit in accordance with the Evidence Act or not, when the genuineness of the documents are not in dispute.

13. It is admitted position that the Tribunal awarded interest at the rate of 6% per annum from the date of the filing the application till final realization of the claim amount and I do not find any substance in the claimants prayer that they are entitled to get higher rate of interest @9% from the date of filing of the application, since it is not the case of the Appellant that delay in disposal occasioned due to any latches on the part of insurance company.

14. In such view of the matter the assessment of the compensation should be as follows:-

Annual Income of the Victim (5000X12) = Rs.60,000/-

Future prospect at the rate of 25% i.e. Rs. 15,000/-

1/4th deduction on account of personal living expenses (Rs. 75,000-18,750) = Rs. 56,250/-

Apply multiplier 14 = Rs. 7,87,500/-

Medical expenses 11,000/-

General damages 70,000/-

Total compensation amount Rs.8,68,500/-

Less amount already paid Rs. 5,29,500/-

Balance amount Rs.3,39,000/-

15. In view of aforesaid discussion **FMAT (MV) 28 of 2024** is hereby deposed of with a direction upon the respondents to pay Rs. 3,39,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application i.e. from 16.02.2015 within a period of 6 weeks from the date of communication of the order. The Insurance company will deposit the amount before Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri and the payment will be made in the mode and manner as directed by the Trial Court, in the impugned judgment. In case of non-deposit of the said awarded amount the appellants will be at liberty to execute the award 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.)