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

Present:

The Hon'ble Justice Partha Sarathi Sen

FMA 43 of 2025

Sourjyo Deep Basu alias Sourjyodeep Basu
Vs.
Cholamandalam M/s. General Insurance Company Limited & Anr.

For the appellant	:	Mr. Subir Banerjee Mr. Abhijit Raha
For the respondent/ Insurance Company	:	Ms. Supriya Singh
Heard on	:	19.08.2025
Judgement on	:	19.08.2025

PARTHA SARATHI SEN, J.:

1. The informal paper book as filed today on behalf of the claimant/appellant in Court is taken on record.

2. In this appeal, the judgment dated, 04.07.2023 as passed by the learned Judge, MAC Tribunal, FTC 1st Class, Jalpaiguri in MAC Case No. 180 of 2018 is assailed.

3. By the impugned judgment, the said Tribunal in an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as

'the said Act of 1988' for short) passed an award to the tune of Rs. 5,50,000/- as compensation in favour of the claimant directing the respondent insurance company herein to pay the said assessed amount within a month from the date of passing of this judgment failing which the said awarded amount would carry interest at the rate of six per cent per annum from the date of filing of the said application for compensation till actual payment.

4. The claimant who is the son of the deceased felt aggrieved with the quantum of the award as made by the said Tribunal and thus preferred the instant appeal.

5. In course of his argument, Mr. Banerjee, learned advocate appearing in Virtual Mode duly assisted by Mr. Raha, learned advocate appearing on behalf of the appellant made the following submissions.

a) that the Tribunal for no reason whatsoever has failed to consider the evidence as adduced by the P.W.s to the effect that the deceased was a private tutor and she was thus self-employed and, therefore, learned Tribunal is not justified to treat the deceased as a home-maker and the Tribunal is equally not justified to assess the monthly income of Rs. 5,000/- per month which according to Mr. Banerjee is exceptionally low.

b) placing his reliance upon the judgment dated 18.08.2025 as passed by this Court in FMA 30 of 2024 (***Baldeo Oraon***

and Anr. Vs. The Oriental Insurance Company Ltd. and Anr.) Mr. Banerjee submits that in the case of ***Baldeo Oraon and Anr. (supra)*** this Court assessed the income of a home-maker to the tune of Rs. 6,000/- per month on the basis of the proposition of law as decided in the case of ***Syed Sadiq & Ors. Vs. Divisional Manager, United India Insurance Company Ltd.*** reported in ***(2014) 2 SCC 735***, an unreported decision of the Hon'ble Supreme Court dated 01.12.2022 as passed in ***Civil Appeal No. 8960 of 2017*** in the case of ***Muhammed @ Kunjumuhammed Vs. United India Insurance Co. Ltd.*** and in the reported decision of ***Angad Tiwari & Anr. Vs. National Insurance Co. Ltd. & Anr.*** reported in ***2025 ACJ 312***.

c) that the learned Tribunal failed to consider the future prospect to the extent of 25 per cent as has been held in the case of ***National Insurance Company Ltd. Vs.*** reported in ***(2017) 16 SCC 680***.

d) that the learned Tribunal while passing the judgment impugned has also not granted any compensation towards loss of consortium under the heading "general damages" overlooking the fact that the claimant is the sole child of the deceased.

6. It is thus submitted that while allowing the instant appeal and while enhancing the amount of compensation, a sum of Rs. 40,000/- towards loss of consortium may be added under the heading “general damages”.
7. It is further submitted that considering the judgment of ***Pranay Sethi & Ors. (supra)***, learned Tribunal ought to have added 20 per cent over the assessment of “general damages” considering the fact that the judgment of ***Pranay Sethi & Ors. (supra)*** was pronounced in the year 2017 whereas the impugned judgment was pronounced in the year 2023 and, therefore, from the date of passing of the judgment of ***Pranay Sethi & Ors. (supra)*** six years have passed and thus, the Tribunal ought to have enhanced the quantum of “general damages” at the rate of 10 per cent in every three years in view of the decision of ***Pranay Sethi & Ors. (supra)***.

8. It is further submitted by Mr. Banerjee that from the ordering portion of the judgment, it would reveal that the learned Tribunal for the reasons best known to him granted only penal interest instead of grant of interest from the date of filing of the application for no reason whatsoever.

9. Mr. Banerjee thus submits that it is a fit case for allowing the instant appeal by enhancing the quantum as prayed for.

10. Ms. Singh, learned advocate appearing on behalf of the respondent/insurance company, in course of her argument, however, disputed the contention of Mr. Banerjee.

11. It is submitted by Ms. Singh that the learned Tribunal is very much justified in not granting any compensation towards future prospect in absence of proof of any income of the deceased who is a home-maker.

12. It is thus submitted by Ms. Singh that since the amount of compensation as assessed by the said Tribunal is absolutely justified, there is hardly any scope to interfere in the impugned judgment in the instant appeal.

13. Ms. Singh thus submits that it is a fit case for dismissal of the instant appeal.

14. On careful perusal of the entire materials as placed before this Court, it appears that though before the Tribunal it is the specific case of the present appellant who is the claimant before the Tribunal that the deceased was a private tutor, however, in absence of any substantive material, this Court finds no infirmity in the impugned judgment of the said Tribunal wherein the said Tribunal had come to a finding that the claimant before him has failed to produce any document of income with regard to the actual income of the deceased at the material time.

15. This Court equally finds no infirmity in the finding of the learned Tribunal in holding that the victim was a home-maker and, therefore, her contribution to her family members cannot be ignored since no

material is forthcoming before the Tribunal that she was physically unfit.

16. It thus appears to this Court that based on such proposition, learned Tribunal assessed the monthly income of Rs. 5,000/- per month.

17. In considered view of this Court, the assessment of income to the tune of Rs. 5,000/- per month of the deceased is at the lower side in view of the reported decision of ***Muhammed @ Kunjumuhammed (supra)*** and ***Angad Tiwari & Anr. (supra)*** wherein the Hon'ble Supreme Court considering the role of a home-maker came to a finding that the monthly income of a deceased home-maker should be assessed to the tune of Rs. 6,000/- per month.

18. In view of the proposition of law as discussed supra and keeping in mind that the said Act is a beneficial legislation, this Court considers that the justice would be sub-served if the monthly income of the deceased is assessed to the tune of Rs. 6,000/- per month instead of Rs. 5,000/- per month as calculated by the said Tribunal.

19. As rightly pointed out by Mr. Banerjee, learned advocate appearing on behalf of the appellant that the said Tribunal while passing the impugned judgment has failed to consider the reported decision of ***Pranay Sethi & Ors. (supra)*** wherein the Hon'ble Supreme Court clearly mandated that the amount under the "general damages" should be enhanced at the rate of 10 per cent in every three years.

20. As rightly argued by Mr. Banerjee in the impugned judgment, the learned Tribunal granted no compensation towards the future prospect especially when the deceased was aged about 47 years and she was able bodied.

21. Such being the position, this Court considers that the learned Tribunal ought to have future prospect to the extent of 25 per cent per annum over the assessed annual income of the deceased.

22. This Court has noticed that while calculating the compensation, the learned Tribunal under the heading “general damages” granted no compensation towards loss of consortium though in the accident, the claimant being the son, lost his mother.

23. In view of such, this Court is of considered view that the learned Tribunal ought to have assessed the amount of compensation to the tune of Rs. 40,000/- towards loss of consortium under the heading “general damages”.

24. It further appears to this Court that the learned Tribunal in the impugned judgment has not added the increase of general damages though it is the specific mandate of the Hon’ble Supreme Court in the case of ***Pranay Sethi & Ors. (supra)*** that the amount under the heading “general damages” would be enhanced at the rate of 10 per cent in every three years. In view of such, this Court considers that justice would be sub-served if 20 per cent of the general damages as added in computing the compensation as payable to the claimant.

25. In view of the discussion made hereinabove, this Court while disposing the instant appeal calculates the compensation as payable to the appellant/claimant in the manner indicated hereunder.

Monthly Income	6000.00
	x 12
Annual Income	72000.00
Less : Deduction 1/3rd	- 24000.00
	48000.00
Add: Future Prospect 25 % (Age 47 years)	+12000.00
	60000.00
Multiplier - 13 (age 47 years)	x 13
	780000.00
Add: General Damages Funeral Expense = Rs. 15,000/- Loss of Estate = Rs. 15,000/- Loss of consortium = Rs. 40,000/-	+ 70000.00
	850000.00
20 % Enhancement of general damages	+ 14000.00
Total	864000.00

26. The aforementioned amount of Rs. 8,64,000/- shall carry interest at the rate of 6 per cent per annum from the date of filing of the claim application i.e., from 26.04.2018 till the actual payment.

27. It is further directed that the aforementioned awarded amount together with interest accrued thereon shall have to be disbursed in favour of the appellant within 180 working days from the date of passing of this judgment after making adjustment of previous

payment of Rs. 5,50,000/- as already received by the present appellant.

28. The aforementioned balance awarded amount shall have to be deposited with the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri by the respondent no. 1/insurance company within the stipulated period as mentioned above.

29. Liberty is given to the appellant to withdraw the balance awarded amount together with interest accrued thereon as indicated in the foregoing paragraph from the office of the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri upon production of his identity proof which will be authenticated by the learned advocate on record for the appellant.

30. With the aforementioned observations, **FMA 43 of 2025** is allowed and disposed of.

31. Consequently, the impugned judgment dated 04.07.2023 as passed by the learned Judge, MAC Tribunal, FTC 1st Class, Jalpaiguri in MAC Case No. 180 of 2018 is modified to the extent indicated hereinabove.

32. Department is directed to provide free copy of this judgment to the appellant herein.

33. Liberty is given to the learned advocate on record for the appellant to communicate the server copy of this judgment to the respondent no. 1/insurance company forthwith.

34. The respondent no. 1/insurance company is directed to act on the server copy of this order.

35. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

Sourav Banerjee
A.R. (Court)/
Suvayan Ghosh
A.R. (Court)