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

FMA 25 of 2024

Smt. Saru Chhetri

-VS-

The New India Assurance Co. Ltd. & anr.

Mr. Subir Banerjee

Mr. Abhijit Raha

... for the appellant-claimant

Mr. Rishin Chakraborty

... for the respondent no.1–Insurance Co.

This appeal is preferred against the judgment and award dated 13th June, 2023 passed by learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 3rd (Special) Court, Jalpaiguri in M.A.C. Case No.393 of 2021 granting compensation of Rs.58,81,588/- in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 16th June, 2021 at about 8:00 p.m. while the victim, Bijay Chhetri along with his friend, namely, Bishal Chhetri was proceeding towards Chanda Company from Odlabari at that time near Chanda Company, Bagrakote under P.S. Mal, District Jalpaiguri the offending vehicle bearing registration no. WB-74BB-6059 coming in a high speed and in rash and negligent manner dashed the victim

and his friend. As a result of such accident, the victim sustained severe injuries on his person and he succumbed to his injuries and died. On account of sudden demise of the victim, the claimant being the mother of the deceased filed application for grant of compensation to the tune of Rs.67,25,210/-together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claim case was keenly contested by the respondent no.1-Insurance Company by filing written statement.

Respondent no.2-owner of the offending vehicle though filed written statement but subsequently, did not contest the claim application. By order dated 24th September, 2024 service of notice of appeal upon the respondent no.2, owner of the offending vehicle, was dispensed with since he did not contest the matter before the learned Tribunal.

The claimant in order to establish her case examined herself as PW1 and also adduced the evidence of one Gagan Sharma as PW2 and Naib Subedar Bikash Tamang as PW3.

The respondent no.1-Insurance Company did not adduce any evidence in support of its case.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs.58,81,588/- in

favour of the claimant under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimant has preferred the present appeal.

Mr. Subir Banerjee, learned Advocate appearing for the appellant-claimant submits that the learned Tribunal erred in determining the income of the victim by deducting the house rent allowance. He further submits that it is settled law that actual income has to be determined upon deduction of tax component from the gross salary. Admittedly, the income of the victim was not taxable. The gross income of the victim was Rs.41,205/- per month, which should be taken into consideration for calculating the compensation. He fairly submits that the learned Tribunal ought not to have granted filial consortium to the claimant, being the mother. He seeks for modification of the award.

On the contrary, Mr. Rishin Chakraborty, learned Advocate for the respondent no.1-Insurance Company submits that the learned Tribunal has rightly deducted the House Rent Allowance from the gross salary of the victim. To buttress his contention he relies on the decision of the Hon'ble Bombay High Court passed in ***National Insurance Co. Ltd. -versus- Laurreta Shashi Mogale and ors.***, reported in **2024 ACJ 446** .

Having heard the learned advocates for the respective parties, the only issue which has fallen for consideration is whether the learned Tribunal erred in determining the income of the victim to the tune of Rs.35,874/- per month.

It is not in dispute that the gross salary of the victim at the time of accident was Rs.41,205/- per month as is evident from Exhibit 8. Admittedly, the income of the deceased does not fall within the taxable income limit. As per the decision of the Constitution Bench in the case of ***National Insurance Company Limited –versus- Pranay Sethi and ors.***, reported in ***2017 ACJ 2700***, ‘income’ means actual income less tax paid. Since in the case at hand the tax paid is nil the income of the victim should be his gross salary of Rs.41,205/- per month.

In view of the above, the decision in *Lauretta Shashi Mogale (supra)* does not apply to this case.

In view of the decision in *Pranay Sethi (supra)* the loss of consortium is restricted to spouse. Mr. Banerjee, learned Advocate for the appellant-claimant has rightly pointed out that the learned Tribunal ought not to have granted filial consortium to the appellant-mother.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.41,205/-
Annual income (Rs.41,205/- x 12)	Rs.4,94,460/-
Add : 50% future prospect	Rs.2,47,230/-
	Rs.7,41,690/-
Less: 1/2 towards personal and living expenses	Rs.3,70,845/-
	Rs.3,70,845/-
Multiplier 18 (Rs.3,70,845/- x 18)	Rs.66,75,210/-
Add: General damages	Rs.30,000/-
Add : 20% escalation on general damages	Rs.6,000/-
Total	Rs.67,11,210/-

Thus, the claimant is entitled to compensation of Rs.67,11,210/- together with interest @ 6% per annum from the date of filing of the claim application till deposit. It is informed by the learned Advocate for the appellant-claimant that the claimant has already received the amount of compensation of Rs.58,81,588/- granted by the learned Tribunal and the interest thereon.

Accordingly, the Insurance Company is directed to deposit the balance amount of compensation of Rs.8,29,622/- together with interest on the balance amount of compensation @ 6% per annum from the date of filing of the claim application till deposit by way of a cheque before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri within a period of six weeks from date.

The appellant-claimant is directed to deposit *ad valorem* Court fees on the compensation assessed, if not already paid.

Upon deposit of the aforesaid amount of compensation and interest as indicated above, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall disburse the amount in favour of the appellant-claimant subject to satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal being **FMA 25 of 2024** stands allowed. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Let the trial court records be sent to the learned Tribunal in accordance with the rules.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)