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

Present: The Hon'ble Justice Partha Sarathi Sen

FMA 38 of 2024

Baldeo Oraon and Anr.
Vs.
The Oriental Insurance Company Ltd. and Anr.

For the appellants: Mr. Gobinda Saha, Adv., Mr. Tamal Kumar Sen, Adv., Mr. Milon Ch. Laskar, Adv., Ms. Priyanka Dey, Adv.

For the respondent no.1/ insurance company: Mr. Rishin Chakraborty, Adv.

Heard on : 12.08.2025
Judgement on : 18.08.2025

PARTHA SARATHI SEN, J:-

1. In the instant appeal the judgment dated 14.06.2024 as passed in MAC case no.115 of 2020 by the Motor Accident Claims Tribunal, 2nd Fast Track Court, Jalpaiguri (hereinafter referred to as the said Tribunal in short) is assailed.

2. By the impugned judgement the said Tribunal in an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act in short) passed an award for Rs.9,10,000/- as compensation together with interest at the rate of 6 % per annum from the date of filing of the application till realization of the awarded amount in favour of the claimants.

3. The claimants who are the husband and daughter of the deceased felt aggrieved with the quantum of the award and thus preferred the instant appeal.

4. In course of his argument Mr. Saha, learned advocate appearing on behalf of the claimants/appellants at the very outset draws attention of this Court to the copy of the impugned judgement as available at page nos. 14 to 25 of the informal paper book as filed by him.

5. Attention of this Court is drawn to internal page nos. 6 to 9 of the impugned judgement. It is submitted by Mr. Saha that before the said Tribunal though it is the specific case of the claimants/appellants herein that the deceased prior to her accidental death was a tea garden worker and in that capacity she used to earn a sum of Rs. 300 per day towards her wages, however the said Tribunal for the reason best known to it have failed to consider the evidence as led by the appellants in the said Tribunal and thus without assigning any cogent reason came to a finding that the notional income of the deceased would be considered to the tune of Rs. 5000/- per month which is without any basis.

6. In course of his argument Mr. Saha places his reliance upon the reported decision of ***Syed Sadiq and Ors vs. Divisional Manager, United India Insurance Company Ltd.*** *reported in* ***(2014) 2 SCC 735*** and 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***.

7. It is submitted by Mr. Saha that in the reported decision of ***Syed Sadiq*** (supra)the Hon'ble Apex Court while considering an appeal preferred by the claimants on account of death of a person who used to do vegetable vending work came to a finding that the notional income of the said deceased ought not be less than Rs. 4500/- per month. It is further submitted by Mr. Saha that the Hon'ble Apex Court come to such finding on the basis of some guess work in absence of any supporting material considering the fact that it is difficult for the appellants to collect documentary evidence to substantiate the actual income of the deceased.

8. It is further submitted by Mr. Saha that in the case of ***Muhammed @ Kunjumuhammed (supra)*** the Hon'ble Apex Court had accepted the notional income of a home maker to the tune of Rs.6000/- per month. It is thus submitted by Mr. Saha that the monthly income of the deceased as assessed by the said Tribunal is required to be enhanced.

9. In course of his argument Mr. Saha also places his reliance upon the reported decision of ***National Insurance Company Ltd. vs. Pranay Sethi and Ors.*** *reported in* ***(2017) 16 SCC 680***. It is submitted by Mr. Saha in the said reported decision of ***Pranay Seti (supra)*** the Hon'ble Supreme Court directed for enhancement of calculation at the rate of 10 % in every three years in respect of conventional heads namely; loss of estate, loss of consortium and funeral expenses as mentioned therein.

10. It is thus submitted by Mr. Saha that the said Tribunal while passing the impugned judgement has failed to enhance the rate to the tune of 20 % on

account of conventional heads keeping in mind that the judgement of ***Pranay Sethi (supra)*** was passed in the year 2017 whereas the impugned judgment has been passed in the year 2024 i.e. after seven years.

11. It is thus submitted by Mr. Saha that while disposing and allowing the instant appeal the total general damages to the tune of Rs. 70,000/- as calculated by the said Tribunal may be enhanced by 20% on the said amount of Rs.70,000/-.

12. Per contra, Mr. Chakraborty, learned advocate appearing on behalf of the respondent/insurance company submits before this Court that in the impugned judgement the Tribunal has rightly assessed the quantum of notional income to the tune of Rs.5000/- per month in absence of any proof that the deceased prior to her death was working as a tea garden worker.

13. Placing his reliance upon the reported decision of ***Mehmooda Bee and Ors. Vs. National Insuracne Co. Ltd. reported in 2023 ACJ 329, Heerappa and Ors. Vs. Managing Director, N.W.K.S.R.T.C, Hubballi Division*** *reported in* ***2025 (2) T.A.C 486 (S.C)*** and ***Angad Tiwari and Anr. Vs. National Insurance Co. Ltd and Anr.*** *reported in* ***2025 ACJ 312*** it is submitted by Mr. Chakraborty that in the aforementioned three reported decisions the Hon'ble Supreme Court accepted the earning of the deceased to the tune Rs. 5000/- per month in absence of any documentary proof.

14. It is thus submitted by Mr. Chakraborty that in view of such consistent stand taken by the Hon'ble Supreme Court there is hardly any scope to

interfere with the assessment as made by the Tribunal in respect of the monthly income of the deceased.

15. Mr. Chakraborty however, in his usual fairness submits before this Court that keeping in mind the proposition of law in the reported decision of ***Pranay Sethi (supra)*** the said Tribunal ought to have enhanced the general damages to the extent of 20 % of the calculation as made by him.

16. This Court has also meticulously gone through the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

17. 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 appellants who are the claimants therein that the deceased was a tea garden worker however, in absence of any substantive material this Court finds no infirmity in the impugned judgement of the said Tribunal wherein the said Tribunal had came to a finding that the claimants before him have failed to produce any document of income with regard to the actual income of the deceased at the material time.

18. This Court has also noticed that considering the fact that the deceased who is the wife of the claimant no. 1 and mother of claimant no.2 used to perform household work for providing meal to the claimants and for taking care of them, the said Tribunal had considered the notional income of the deceased to the tune of Rs. 5000/- per month which in considered view of this Court cannot be said to be unjust in any way.

19. In considered view of this Court the reported decision of ***Syed Sadiq (supra)*** as cited from the side of the present appellants are distinguishable from the facts and circumstances as involved in the instant appeal in view of the fact in the case of ***Syed Sadiq (supra***) the deceased according to the claimants was a vegetable vendor.

20. At this juncture if I look to the reported decision of ***Muhammed @ Kunjumuhammed (supra)*** as cited from the side of the appellants as well as in the reported decision of ***Angad Tewari (supra)*** as cited from the side of the respondent/insurance company it appears to this Court that the Hon'ble Supreme Court considering the role of a home maker at her home assessed the monthly income of the deceased to the tune of Rs. 6000/- per month.

21. In view of the proposition of law as decided in the case of ***Muhammed @ Kunjumuhammed (supra)*** and ***Angad Tewari (supra)*** and also keeping in mind that the said Act is a beneficial legislation, this Court considers that justice would be served if the monthly income of the deceased is assessed to the tune of Rs. 6000/- per month instead of Rs. 5000/- per month as calculated by the said Tribunal.

22. As rightly pointed out by the learned advocates for the contending parties that the said Tribunal while passing the impugned judgement has failed to consider the reported decision of ***Pranay Sethi (supra)*** wherein the Hon'ble Supreme Court clearly mandated that the amount under the general damages should be enhanced at the rate of 10 % in every three years.

23. Since the judgement of ***Pranay Sethi (supra)*** was passed in the year 2017 and since the impugned judgment was passed in the year 2024 this Court further considers that the general damages of the tune of Rs. 70,000/- as calculated by the Tribunal should be enhanced to the tune of 20 % over Rs. 70,000/- i.e. to the tune of Rs.14,000/-.

24. In view of such, this Court while disposing the instant appeal calculates the compensation as payable to the appellants in the manner indicated hereunder:-

1. Monthly Income of the deceased= Rs. 6000/- PM
2. Annual Income of the deceased= Rs.6000 X12= Rs.72,000/-
3. Adding 40% of Rs. 72,000/- as future prospect = Rs. 28,800/-

   (72,000+28,800)= Rs.1,00,800/- p.a
4. Less 1/3rd as expenses of the deceased if she remained alive-

   Rs.1,08,000/-

   =Rs. 33,600/-p.a

   Rs.67,200/-
5. Add Rs.67,200/- X 15 (Multiplier)= Rs. 10,08,000/-
6. Adding Gneral damage:
   i. For Funeral expenses Rs. 15,000/-
   ii. For the loss of estate Rs. 15,000/-
   iii. Loss of Consortium Rs. 40,000/-

Total general damages= Rs.70,000/-

Add 20% on Rs. 70,000/-= Rs.14,000/-

Rs. 84,000/-

Now total income of deceased + General damages= (Rs. 10,08,000/- + 84,000/-) = Rs. 10,92,000/-

25. The aforementioned amount of Rs.10,92,000/- shall carry interest at the rate of 6 % p.a from the date of filing of the claim application i.e from 11.06.2020 till actual payment.

26. It is further directed that the aforementioned awarded amount together with interest accrued thereon shall have to be disbursed to both the appellants in equal proportion within 180 working days from the date of passing of this judgement after making adjustment of previous payment of Rs.9,10,000/- together with 6 % interest p.a. as already received by the appellants in equal proportion.

27. 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.

28. Liberty is given to the appellants to withdraw the balance awarded amount together with interest accrued thereon as mentioned hereinabove from the office of the Learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri upon production of their respective identity proofs which will be authenticated by the learned advocate on record of the appellants.

29. With the aforementioned observation FMA (MV) 38 of 2024 is allowed and disposed of.

30. Consequently, the impugned judgement dated 14.06.2024 as passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Fast Track Court, Jalpaiguri in MAC Case no. 115 of 2020 is modified to the extent indicated hereinabove.

31. Department is directed to provide free copies of this judgement to the appellants herein.

32. Liberty is given to the learned advocate on record for the appellants to communicate the server copy of this judgement to the respondent/insurance company forth with.

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

34. 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)