

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

Present:

The Hon'ble Justice Partha Sarathi Sen

FMA 45 of 2024

Smt. Madhabi Das

Vs.

Oriental Insurance Company Ltd. & Anr.

For the appellant	:	Mr. Gobinda Saha Mr. Tamal Kr. Sen Ms. Priyanka Dey Mr. Milan Ch. Laskar
For the respondent no. 1	:	Mr. Rashin Chakraborty
Heard on	:	14.08.2025
Judgment on	:	14.08.2025

PARTHA SARATHI SEN, J.:

1. In the instant appeal the judgment dated 02.07.2024 as passed in MAC Case no. 214 of 2019 as passed by the learned Judge, MAC Tribunal, FTC-2nd, Jalpaiguri (hereinafter referred to as the 'said Tribunal' in short) is assailed.
2. 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' in short) passed an award for Rs. 7,86,000/- together with interest at the rate of 6% per annum with effect from 02.07.2019 as compensation in favour of the claimant which was directed to be paid within 70 days from the date of passing of the award failing which it was further directed that the said awarded amount would carry interest at the rate 9% per annum from the date of passing of the award till realization.

3. The claimant who is the mother of the deceased felt aggrieved and thus preferred the instant appeal.
4. In course of his argument Mr. Saha, learned Advocate appearing on behalf of the claimant/appellant at the very outset draws attention of this Court to the impugned judgment as available in the informal paper book as filed today which has been taken on record.
5. Attention of this Court is drawn to internal page no. 10 of the impugned judgment. It is submitted by Mr. Saha that before the said Tribunal though it is the specific case of the claimant that the deceased during his lifetime used to do seasonal business, however, the said Tribunal most surprisingly assessed the notional monthly income of the deceased to the tune of Rs. 5,000/- per month which is exceptionally low.
6. In course of his argument Mr. Saha places his reliance upon the reported decision of **Syed Sadiq & Ors. vs. Divisional Manager, United India Insurance Company Ltd.** reported in **(2014) 2 SCC**

735 and an unreported decision of Hon'ble Supreme Court dated 01.12.2022 as passed in **Civil Appeal No. 8960 of 2017** in the case of **Muhammed @ Kunjumammed vs. United India Insurance Co. Ltd.**

7. Drawing attention to the reported decision of **Muhammed @ Kunjumammed (supra)** it is submitted by Mr. Saha that in the said reported decision the Hon'ble Supreme Court had accepted the notional income of a homemaker to the tune of Rs. 6,000/- per month. It is thus submitted by Mr. Saha that in view of the specific case of the claimant that the deceased was aged about 25 years used to carrying on seasonal business, the fixation of notional income to the tune of Rs. 5,000/- per month is exceptionally low and such finding is unreasoned.
8. Placing his reliance upon the reported decision of **Syed Sadiq (supra)** it is submitted by Mr. Saha that in the said reported decision the Hon'ble Apex Court while considering an appeal under the said Act came to a finding that in the event a person died on account of accident who used to do vegetable vending work, in order to assess his notional monthly income some guess work is to be done in absence of any supporting material considering the fact that it is difficult from the claimant to collect documentary evidence to substantiate the actual income of the deceased.

9. It is thus submitted by Mr. Saha that the notional income of the deceased may be considered to the tune of Rs. 6,000/- per month instead of Rs. 5,000/- per month as wrongly assessed by the said Tribunal.
10. At this juncture, Mr. Saha again draws attention of this Court to internal page no. 11 of the impugned judgment regarding the calculation made by said Tribunal under the heading “general damages”. It is submitted by Mr. Saha that most surprisingly the said Tribunal has failed to consider the filial consortium as payable to the claimant who has lost her child. It is submitted by Mr. Saha that grant of filial consortium has been considered favourably by the Hon’ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors.*** reported in ***2018 INSC 828***.
11. It is thus submitted by Mr. Saha that filial consortium to the tune of Rs. 40,000/- may be added keeping in mind the ratio of decision in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***.
12. Mr. Saha thus submits that the instant appeal may be allowed by increasing the compensation as prayed for.
13. *Per contra*, Mr. Chakraborty, learned Advocate appearing on behalf of the respondent no. 1/insurance company contended that the notional monthly income of the deceased to the tune of Rs. 5,000/-

is perfectly justified in absence of any proof of income of the deceased.

14. Placing his reliance upon the reported decision of ***Mehmooda Bee & Ors. vs. National Insurance Co. Ltd.*** reported in **2023 ACJ 329**, ***Heerappa & Ors. vs. Managing Director, N.W.K.S.R.T.C.*** reported in **2025(2) T.A.C. 486 (S.C.)** and ***Angad Tiwari & Anr. vs. National Insurance Co. Ltd. & Anr.*** reported in **2025 ACJ 312** it is submitted by Mr. Chakraborty that in the said three reported decisions it is the consistent view of the Hon'ble Supreme Court to accept the earning of the deceased to the tune of Rs. 5,000/- per month in absence of proof of actual income of the deceased.
15. It is thus submitted by Mr. Chakraborty that by no stretch of imagination it can be said that the calculation as made by the Tribunal with regard to the notional income claimant is low as wrongly argued.
16. In his next limb of submission Mr. Chakraborty while placing his reliance upon the reported decision of ***Bebi Giri vs. National Insurance Co. Ltd*** reported in **2023 ACJ 343** submits that in the said reported decision of Hon'ble Supreme Court expressed its view that the mother of the deceased is not entitled to get compensation on account of loss of consortium. It is thus submitted by Mr. Chakraborty that the instant appeal is devoid of any merit and is thus liable to be dismissed.

17. This Court has 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. This Court has also gone through the reported decision as cited from the Bar.
18. On careful perusal of the entire materials as placed before this Court, it appears to this Court that admittedly in the reported decision of **Muhammed @ Kunjumammed (supra)** as well as in the reported decision of **Angad Tiwari (supra)** the Hon'ble Supreme Court considering the role of a homemaker assessed the monthly income of the deceased to the tune of Rs. 6,000/- per month.
19. As rightly pointed out by Mr. Saha that in the reported decision of **Syed Sadiq (supra)** the Hon'ble Apex Court considered the predicament of the claimant to collect the document of income of the deceased who used to do vegetable business basically in an unorganized sector.
20. Keeping in mind, the aforementioned proposition of law if I look to the factual aspects of this case, it appears to this Court that it is the specific case of the claimant of the said Tribunal that her deceased son who was aged about 25 years used to do seasonal business and, therefore, it would be very difficult on behalf of the claimant/mother to produce any document of income of his deceased son to substantiate the actual income of the said deceased. However,

keeping in mind the ratio of decisions in the case of **Muhammed @ Kunjumammed (supra)** and **Angad Tiwari (supra)** and also keeping in mind that the said Act is basically a beneficial legislation this Court considers that 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.

21. With regard to non-addition of filial consortium under the heading “general damages” in the impugned judgment it reveals to this Court that the concept and scope of filial consortium has been duly considered by the Hon’ble Supreme Court in the case of **Nanu Ram alias Chuhru Ram (supra)** wherein the Hon’ble Apex Court held thus:

“Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the

case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.”

22. Admittedly in the subsequent judgment of ***Bebi Giri (supra)*** the Honble Supreme Court though declined to grant filial consortium in favour of the mother of the deceased, however, while passing the judgment of ***Bebi Giri (supra)*** the Hon'ble Supreme Court had got no occasion to consider the earlier judgment as passed in ***Nanu Ram alias Chuhru Ram (supra)***. It is further appears to this Court that in the reported decision of ***Bebi Giri (supra)*** the Hon'ble Supreme Court has not taken any contrary view as taken by the earlier co-ordinate Bench of Hon'ble Supreme Court in the case of ***Nanu Ram alias Chuhru Ram (supra)***.
23. In view of such, this Court considers that keeping in mind the proposition of law as decided in the case of ***Nanu Ram alias Chuhru Ram (supra)*** a sum Rs. 40,000/- ought to have been added

under the heading “general damages” by the said Tribunal in the impugned judgment.

24. In view of the discussion made hereinabove, this Court while disposing the instant appeal calculate the compensation as payable to the appellant in the manner indicated hereinbelow:

1. Monthly Income of the deceased as 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 ½ of Rs. 1,00,800/- as expenses of unmarried deceased if he ought to alive-

=Rs. 50,400/-

Rs. 50,400/- p.a

5. Add Rs.50,400/- X 18 (Multiplier)= Rs. 9,07,200/-

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/-

Now total income of deceased + General damages= (Rs. 9,07,200/- + 70,000/-) = Rs. 9,77,200/-

25. The aforementioned amount of Rs. 9,77,200/- shall carry interest at the rate of 6% per annum on the date of filing of the claim application that is from 02.07.2019 till actual payment.
26. It is further directed that the aforementioned awarded amount together with interest accrued thereon shall have to be deposited with the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri to the appellant within 180 working days from the date of passing of this judgment after adjusting the payment of Rs. 7,86,000/- together with interest accrued thereon as has been already received by the claimant.
27. Liberty is given to the appellant herein to withdraw the said amount from the Office of the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri upon production of her identity proof which will be duly authenticated by the learned Advocate for the appellant.
28. With the aforementioned observation, FMA 45 of 2024 is allowed and disposed of.
29. Consequently, the impugned judgment dated 02.07.2024 as passed by the M.A.C. Tribunal, FCT-2nd, Jalpaiguri in M.A.C. Case no. 214 of 2019 is modified to the extent indicated hereinabove.
30. Department is directed to provide free copy of this judgment to the appellant herein.

31. 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.
32. The respondent no. 1/insurance company is directed act on the server copy of this order.
33. 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.)