Item No.32
02.09.2025
Court. No. 1
GB

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

FMA 39 of 2024

Hosen @ Hossain Miya & Anr.
VS
Oriental Insurance Company Ltd. & Anr.

Mr. Gobinda Saha,
Mr. Tamal Kumar Sen,
Ms. Priyanka Dey,
Mr. Milan Chandra Laskar
... for the Appellant.
Mr. Rishin Chakraborty
... for the Insurance Company.

1. Being aggrieved by and dissatisfied with the judgment and award dated July 30, 2024, passed by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri in MAC Case No.342 of 2019, the appellants have preferred this appeal.

2. The first ground of challenge is that the notional income of the deceased was erroneously fixed at Rs.6,000/-, although the tenor of judicial decisions both by the High Court and the Supreme Court were that, in the absence of any proof of income, the notional income should be fixed at around Rs.9,000/- or more. The second ground of challenge is that, the learned Judge erred in law in not awarding interest at the rate of 9% per annum over the assessed compensation, from the date of filing of

the claim application till the date of actual disbursement.

3. Learned advocate for the insurance company submits that in the cross-examination the claimant/husband of the deceased categorically stated that there was no document in support of the income of the victim. Thus, the notional income should have been actually fixed at Rs.3,000/- per month. Instead, the learned Judge fixed the same at Rs.6,000/-, taking into consideration the price index and the rate of inflation. The learned Judge did not commit any illegality or material irregularity in arriving at the said conclusion.

4. With regard to the interest rate, it is submitted by the learned advocate for the insurance company that, the same may be at the rate of 6% per annum as has been permitted by different courts, in similar cases.

5. Considered the documents on record and the deposition of the claimant/husband. It is an admitted position that the victim was running a tea stall when the unfortunate accident took place. Such fact could not be rebutted by the insurance company. The learned Judge recorded that such fact could not be disproved. The deceased was held to be a self-employed person. The notional income was fixed at Rs.6,000/- per month.

6. The contention of the insurance company that the notional income should be Rs.3,000/- was disregarded by the learned Judge.

7. The price of consumer goods at the relevant point of time would be the guiding factor. The learned Judge did not consider whether Rs.200/- per day would be adequate for the sustenance of a three member family in 2019. In my view, per day notional income should be fixed at Rs.250/- taking into consideration the daily expenses of the family during that period. This finding is specially supported by the fact that a daily wages day labourer as per the government notification was earning around Rs.368/- per day. Thus, the notional income of Rs.250/- per day is reasonable and in sync with the price index at the relevant point of time.

8. As the deceased was a lady and her husband also had some income, the husband's income is also factored in for this Court to arrive at a conclusion that Rs.250/- is reasonable. Income of Rs.250/- per day is a reasonable yardstick. The categorical deposition of the claimant/husband was that the income of the deceased was Rs.9,000/-. The law is well-settled that, a person who is working either in an urorganized sector or is self-employed, as in the present case, cannot be expected to prove income by supporting documents. Thus, the contention of Mr.

Rishin Chakraborty, learned advocate for the insurance company, that the income of the deceased could not be proved with any document, is of little consequence, in the socio economic background of the deceased and her family.

9. Under such circumstances, the notional income is fixed at Rs.7,500/- per month. Interest at the rate of 6% per annum from the date of filing of the application, i.e., from October 1, 2019 till the date of actual disbursal, shall be paid by the insurance company. The amount allowed under the conventional rate or Rs.70,000/- shall be enhanced to Rs.84,000/- in view of the decision of ***National Insurance Company Limited versus Pranay Sethi & Ors.*** reported in ***2017 (4) T.A.C. 673 (S.C)***. It is contended that a sum of Rs.6,58,800/- was already deposited before the learned Tribunal and appellants have already withdrawn the said amount. Accordingly, the total payment to be made by the insurance company as per the order of this Court amounts to Rs.8,10,000/-. The said amount will carry interest at the rate of 6% per annum to be calculated from the date of the filing of the application till the date of payment. Thus the balance amount of Rs.1,59,200/- along with interest as directed above shall be deposited with the Registrar High Court Calcutta, Circuit Bench at

Jalpaiguri within two weeks after the reopening of the Court after the puja vacation.

10. Accordingly, the impugned award of Rs. 6,50,800/- is modified as follows:

Monthly Income	Rs. 7,500/-
Annual Income	Rs. 90,000/-
Future prospect @ 10%	Rs. 9,000/-
Total Income	Rs. 99,000/-
Deduction 1/3rd for personal expenses	Rs. 66,000/-
Use of multiplier as per age 52 years	x 11
	Rs. 7,26,000/-
Additional General Damages	Rs. 84,000/-
Total	Rs. 8,10,000/-
Less - Principal awarded by tribunal	Rs. 6,50,800/-
Remaining balance to pay	Rs. 1,59,200/-
+	
Interest on Rs.8,10,000/- from 01.10.2019 till the date of actual disbursal	-------------

11. The amount deposited along with the interest will be handed over to the appellants by the Registrar upon verification of the identity of the claimants. The bank details shall be provided by the appellants to the learned Registrar. As there are two appellants, the learned Registrar shall issue two account payee cheques of equal amount. Fraction if any, will be added to the payment to be made to the appellant no.2.

12. Accordingly, the appeal is disposed of.

13. The pending application, if any, stands disposed of.

14. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)