12.02.2026
Sl. No.2
Court No.9
Ali

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 935 of 2023

Banibala Bhunia & Ors.
Vs.
United India Insurance Co. Ltd. & Anr.

Mr. J.K. Mondal
Mr. S. Rakshit
…… for the appellants/claimants.

Mr. P.K. Pahari
...for the respondent No. 1/Insurance Co.

1. Learned advocates for the parties are present.
2. Heard the learned advocates for the parties.
3. The appellants before this Court were the claimants in a claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 31st day of August, 2022 passed by learned Additional District Judge, Fast Track 1st Court, Tamluk, District-Purba Mednipur in M.A.C. Case No. 235 of 2018.

   The case of the appellants/claimants may be summed up thus:

"On 18.01.18 at about 10:30 hours when the victim Susanta Kumar Bhunia was proceeding towards the Mahishadal side from Gopalpur/Nandamumar side along with his extreme left side morrum/foot path portion of "Haldia-Mechada" road and when he reached near "Gopalpur-Bhattapukur" under P.S.-Mahishadal, then suddenly at the said time and on said road and at side place an offending bus bearing registration number WB-33B-0213 coming with excessive speed, endangering to human life and safety, from "Mahisadal/Haldia" side and dashed the victim with great force.

As a result of the said accident the victim was injured on his head and all over the body and sustained severe injuries and became senseless and thereafter he was taken to Basulia Rural Hospital at Basulia, Mahisadal, Purba Medinipur and the doctor declared the victim as dead. Post Mortem was held at Haldia S.D. Hospital at Basudevpur, Haldia, Purba Medinipur.

The said offending Bus bearing No. WB-33B/0213, was being driven rashly and negligently at a very high speed without blowing horn. The said accident occurred due to violation of traffic/road rules and negligent and rash driving of the Bus bearing No. WB-33B/0213. The said vehicle which was fully responsible for the pathetic accident.

The victim was of 74 years of age having sound health and good physique at the time of accident. The victim was kerosin Oil dealer by profession. The victim is to earn Rs. 6,000/- average per month from his said business. After the accident the said business was totally stopped. Claimants depended for their living upon the victim when he was alive. Now they have no source to maintain themselves.

Pursuant to the claim petition being filed notice was issued upon the opposite parties. Opposite party entered appearance and contested the case. The evidence was adduced and by judgement and award dated 31st day of August, 2022 the learned Trial Court was pleased to dispose the claim case by observing and directing as follows:

"Hence,

ORDERED

that, the instant claim case under section 166 of the M.V. Act be and the same is allowed on contest against the Opposite Parties, no. 2-United India Insurance Co. Limited and exparte against the Opposite Party No. 1.

However, I make no order as to costs.

Each of the six petitioners/claimants do get an award of Rs. 89,500/- (Rupees eighty nine thousand and five hundred only) against the opposite parties.

The claimants do get the compensation only on payment of the entire deficit court fees.

Each of the claimants do get compensation of Rs. 89,500/- and the O.P. No. 2 is directed to issue account payee cheques in faouvr of each of the claimants, accordingly.

The petitioners also do get interest @ 6% interest per annum on the aforesaid awarded sum from the date of filing of this M.A.C case i.e. from 12-06-2018.

The opposite party No. 2 is directed to pay the awarded sum to the petitioners/claimants accordingly by issuing Account Payee cheques of the aforesaid amount in the name of the claimants within 30 days from the date of delivery of this judgement failing which the award shall carry an interest @ 8% per annum from this day till realization of the entire amount.

On payment of the said cheques it will be handed over to the claimants accordingly, on their proper identification and in usual process.

C.F. not paid in full

The Deficit.C.Fees of Rs. 5,390/- be paid in full before the handing over of the cheques to the claimants.

Let a copy of this order be delivered free of costs to the petitioner as well as to the O.P. No.2".

4. Being aggrieved by the order passed by the learned Trial Judge, the appellants/claimants have come up with the instant appeal.

5. Heard learned advocates for the appellants/claimants and learned advocate for respondent No. 1/United India Insurance Company Ltd. Perused the evidences adduced and the materials on records.

6. Learned advocate for the appellants submits that the learned Trial Court has not considered the income of the victim on the basis of evidence of P.W.-2 the Inspector (Food and Supplies), Mahisadal Block. Learned advocate

draws attention to the deposition of P.W.-2 and submits that as per his deposition the victim being the authorised Kerosin Dealer used to receive S.K. Oil Dealer from Government at Rs.28.94 per litter and he was permitted the same at Rs.31.39 Per litter. In the month of December 2017 the victim was allotted 3448 litter S.K. Oil for sale. Presently the commission given to the authorised S.K. Oil Dealer is Rs. 3.36 per litter.

7. Learned advocate further submits that the learned tribunal ought to have considered the number of dependency and ought to have considered personal deduction of 1/4th and not 1/3rd. Learned advocate also submits that the compensation awarded should be enhanced. Learned advocate relies upon the following judicial decisions:

   i) Sanjay Verma Versus Haryana Roadways reported in 2014 (1) T.A.C. 711 (S.C.)

   ii) Seema Rani & Ors. Versus The Oriental Insurance Co. Ltd. & Ors. Reported in 2025 INSC 192

   iii) Kirti & Anr. Etc. Versus Oriental Insurance Company Ltd. reported in 2021 SAR (Civ) 147 and

   iv) Unreported decision of this Hon'ble Court in the case of F.M.A. No. 63 of 2025

8. Learned advocate appearing for the respondent No. 1/ United India Insurance Company draws attention to the materials on records and submits that the different allotments issued to the victim will go to show that the

sale of every month was not uniform. Learned advocate further submits that considering variation of the income learned judge rightly took the notional income of Rs. 6,000/-. Thus there should not be any enhancement. Learned advocate also submits that deduction of 1/3rd on account of personal expenses is reasonable as some of the claimants were major and married.

9. Upon hearing the learned advocates and considering the facts of the case and decisions relied upon this Court is of the view that as the Motor Accident Claim Tribunal has the duty to award just and reasonable compensation mere claim petition of the claimants should not be considered for the purpose of assessing just and reasonable compensation. As Motor Accident Claim legislation is a beneficial legislation, the Court and tribunal cannot be mere umpire but has to proceed to ascertain the truth to do justice by awarding just and reasonable compensation. In the case of **Rajesh & Ors. Versus Rajbir Singh & Ors.** Reported in **(2014) WBLR (SC) 23** the Hon'ble Supreme Court observed as follows:

"10.Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988 is another issue arising for consideration in this case. At para 10 of Nagappa case (supra) it was held as follows: 10. Thereafter, Section 168 empowers the Claims Tribunal to 'make an award

determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

The principle was followed in the later decisions in Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009)6 SCC 280 and in Ningamma v. United India Insurance Co. Ltd., (2009)13 SCC 710.

11. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumbed to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as fas as possible, the misery on account of the accidient with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim

12.***There is another reason why the Court should award proper compensation irrespective of the claim and, if required , even in excess of the claim. After the amendment of the Act by Act 54 of 1994 with effect from 14.11.1994, the report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under sub-section (6) of Section 158 has to be treated as an application for compensation".***

10. Upon considering the evidences of P.W.-2 the Inspector (Food and Supplies) and the allotment made to the victim on different parts of the year this Court is of the view that although income may not be same for every

month as there is variation of sale but it would be just and reasonable to consider the average sale of each month as 300 litters at Rs.3.36 per litter and considered the monthly income of Rs.10,000/-. In the event Rs. 10,000/- is considered to be the monthly income it would be proper to deduct 1/3rd on account of personal expenses as some claimants are major. Upon deduction of 1/3rd of personal expenses the net monthly income comes to Rs.7,000/- per month. The annual income comes to Rs. 84,000/- per month. Hence, the annual dependency loss is Rs. 84,000/-. As the victim was 74 years old multiplier 5 should be applied and the total dependency loss comes to Rs. 4,20,000/-. As Rs.31,000/- is awarded on account of loss of estate and funeral expenses and the total consortium of Rs.2,64,000/- is awarded by the learned Trial Court and no cross objection is filed by the appellant/Insurance Company this Court does not think fit to interfere with the compensation on the heads of general loss and damages thus the amount granted on account of general damages is considered to be Rs. 2,97,000/- thus the total compensation comes to Rs.7,17,000/- by arithmetical calculation. However, this Court is of the view that Rs.7,00,000/-compensation is just and reasonable. Thus, the appellants/claimants are entitled to compensation of Rs.7,00,000/- along with interest @

Rs. 6% per annum from the date of filing till today. The respondent No. 1/United India Insurance Company shall deposit Rs.7,00,000/- along with interest @ 6% per annum from the date of filing till today within eight weeks from the date of communication of this order. In the event the compensation awarded by the learned Trial Court is already deposited the balance amount shall be deposited.

11. The appellants/claimants are permitted to withdraw the amount deposited upon compliance of all necessary formalities.

12. Thus, this appeal stands disposed of.

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

(Biswaroop Chowdhury, J.)