

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 842 of 2024

**The National Insurance Co. Ltd.
Versus
Sangita Maity & Ors.**

With

COT/120/2024

**Sangita Maity & Ors.
-Vs.-
The National Insurance Co. Ltd. & Anr.**

For the Appellant	:	Ms. Sucharita Paul
For the Respondent No.1	:	Mr. Amit Ranjan Roy
Heard on	:	17.01.2025
Judgment on	:	29 th January, 2026.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 to 3 /claimants are present in Court.
2. The instant appeal had been filed against the judgment and award dated 13th March, 2024 passed by the Learned Judge,

Motor Accident Claims Tribunal cum Additional District Judge, 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 500 of 2015.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the respondents/claimants due to the death of the victim in an accident which occurred on 26th May, 2015 at about 7.30 A.M. The victim at the relevant point of time had been a traveler at a bus bearing registration No. WB-29A/8302 approaching from Chandipur to Howrah. In the course of journey, the driver of the aforesaid offending vehicle lost control over the bus which consequently capsized on the road being NH-41. The driver had an exceeding speed, rashly and negligently and certain passengers died instantaneously. The victim was transmitted to District Hospital, Purba Medinipur at Tamluk whereby he expired on the same day of the accident.
4. The Learned Advocate representing the appellant/Insurance Company submitted that instant appeal had been filed since the driver of the offending vehicle had violated the terms and conditions of the insurance policy having over-loaded the bus which precluded the insurance company to pay the compensation claimed.
5. The Learned Advocate representing the respondent No.1 to 3/claimants submitted to have filed a cross objection being COT 120 of 2024 whereby the grievance was ventilated against the

reduction in the monthly income of the victim was Rs. 15,500/- as claimed Rs. 5000/- per month. The Learned Advocate representing the respondent No.1 to 3/claimants further urged that the Learned Tribunal did not consider the salary register placed before the Court by P.W.2 and had been marked as Ext. 9/1 denoting the monthly salary of the victim to be Rs. 15,500/- as gross salary and the net salary to be Rs. 13,369/-. It was further submitted that the Learned Tribunal explained the difference of amount to be erroneous and unbelievable since the document had not been stand properly.

6. Considered the submission of the Learned Advocates representing the respective parties as well as the documents on record.
7. The P.W.2 being the manager working at MM Construction during his cross examination deposed as follows:

"I am not aware if the deceased had any special qualification or training regarding spray painting works. I cannot comment if the victim was or was not a permanent employee of MM Construction. Not a fact that the register of works (register wages) was drawn up in a single sitting in a day. I cannot say if Radhagobindababu had signed all the entries of this register in a single day. It is a fact that the register is not worn out and seems to be fresh. It is a fact that as against no entry of payment of wages any revenue stamp is affixed. I do not know anything except production of the register sent through me. Not a fact that I have deposed falsely suppressing the material truth".

8. The Learned Tribunal in paragraph 15 of the impugned judgment as follows:

“ it is very astonishing matter that the name of P.W.2, Ashok Das does not figure in the Register of wages (i.e. Ext. 9/1) though he has joined in the said M.M. Construction in the year 2013. It appears from Ext. 9/1 that no Revenue Stamp is affixed on payment of wages to the employees. It also appears that some amount of the monthly salary of the victim was deposited in Employees Provident Fund in every month. But no such receipts/documents are produced to prove the deposit in Employees Provident Fund. Another discrepancy is noticed in the Register that the Statement of Wages to employees started from January, 2015 and ended in the month of December, 2015. So, the discrepancies as emerged cast doubts with regard to salary of the victim as shown in the Register of Wages (Ext. 9/1) of M. M. Construction. So, merely by exhibiting of the Register of Wages (i.e. 9/1) it cannot be said to be proved that the victim was an employee of M.M. Construction and he was getting monthly salary of Rs. 15,500/-.

In the case of Laxmi Devi & Others Vs. Mohammad Tabbar & Another reported in 2008 AIR (SC) 1858 – the Hon’ble Supreme Court accepted the reason given by the High Court that even an unskilled labourer, these days, can easily earn Rs. 100/- per day and Rs. 3,000/- per month. Laxmi Devi’s case came up in the year 2008. In view of the ratio of decision of Laxmi Devi’s case, considering the price index and cost of living in the year 2015, I think an unskilled labourer during that period might have earned more than Rs. 100/- per day. So, having heard the submissions of both the sides as well as having regard to the facts and circumstances of the case and in absence of cogent evidence, the notional monthly income of Rs. 5000/- should be considered as monthly income of the deceased Goutam Maity’.

9. The reasoning cited by the Learned Tribunal is acceptable and not interfered with. However, the monthly income of the victim in case of an unskilled worker should be considered as Rs. 8000/- per month. The other portions of the award are not interfered with.
10. The impugned award is modified as follows:

Income	Rs. 8000/-
Future Prospect (40%)	Rs. 3,200/-
Annual Income	Rs. 11,200/-
	X 12
Personal Expenses 1/3 rd	Rs. 1,34,400/-
Multiplier '17'	Rs. 44,800/-
	Rs. 89,600/-
	X 17
General Damages	Rs. 15,23,200/-
Entitlement	Rs. 84,000/-
	Rs. 16,07,200/-

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 15,65,242/=(Rs. 25,000 + 15,40,242/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company. The Learned Advocate representing the appellant/insurance company is to deposit the differential amount i.e. Rs. 5,85,200/- along with 6% interest from the date of filing of the claim application till the date of deposit before the office of the Learned Registrar General, High Court at Calcutta within eight weeks from the date of communication of this order.

12. The Learned Advocate representing the respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 16,07,200/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

13. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest directly to the bank account of the present respondent Nos. 1 to 3 /claimants as mentioned in the impugned judgment and award passed by Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 500 of 2015 on proof of proper identification of the respondent No.1 to 3/claimants subject to payment of ad valorem Court fees. The office of the Learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.
14. The instant appeal and cross objection are disposed of accordingly.
15. The pending application, if any, stands disposed of.
16. The interim order if any stand vacated.
17. The TCR be sent down to the concerned tribunal forthwith.
18. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)