S/L 23-24
17.06.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 323 of 2024
CAN 1 of 2024

The Oriental Insurance CO. LTD.
VS
Rekha Sau @ Sahoo & Ors.

With
COT 42 of 2024

Rekha Sau @ Sahoo & Ors.

Vs.
The Oriental Insurance CO. LTD.

Mr. Ananda Gopal Mukherjee.
... for the Appellant.

Mr. Pingal Bhattacharyya,
Mr. Rajdeep Sinha..
... for the Respondent.

1. Learned advocates for the parties are present. The matter is taken up for hearing.
2. Heard learned advocates for the parties.
3. The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 17th July, 2023 passed by learned Additional District Judge, 2nd Court, Purba Medinipur, in M.A.C. Case No. 115 of 2017. The claimants respondent Nos. 1 to 5 being also aggrieved by the judgment and award passed

by the learned Trial Court have come up with the cross objection.

4. The case of the claimants before the learned Trial Court may be summed up thus:

On 20.01.2017 at about 8.30 A.M. the victim Bhagwan Sau @ Sahoo and Sukanta Paria were returning home by a motor cycle bearing no. WB-34G/4334 from Aman filling station (HP) Oil Pump, Asti Mouza, after taking Oil when they came out from the said oil pump, suddenly the offending vehicle bearing no.-WB-33C/6445(Bus) which was coming from Belda side towards Khakurda side with extreme high speed endangering to human life and safety with Zig-Zag manner without blowing any horn dashed the said motor cycle along with the victim Bhagwan Sau @ Sahoo and Sukanta Paria with great force.

As a result the said motor cycle was damaged the victim Bhagwan Sau @ Sahoo and Sukanta Paria were seriously injured all over the body specially on head. Then and there they were taken to Belda Hospital, where the attending doctor examined them and declared dead.

The accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle bearing no.-WB-33C/6445 (Bus).The victim was Green Betel Stockist by his profession. The victim was the only earning member of his family and due to the death of the victim, his family members are very much shocked and they are suffering with great economic crisis.

5. Pursuant to filing of this case notice was issued upon the opposite party (vehicle owner) and opposite party Insurance Company. Opposite party (vehicle owner) did not contest the case. However, the opposite party insurance Company contested the case by filing written statement. Issues were framed and evidence was adduced. The learned Trial Judge upon considering the evidence and upon hearing the learned advocates was pleased to dispose of the claim case by observing and directing as follows:

O R D E R E D

"That the instant M.A.C. Case being no. 115/17 (Reg. No.117/17) be and the same is allowed on contest against OP No.2/the Oriental Insurance Co. Ltd. (insurer) and ex parte against the OP No.1/Sri Bishnupada Chanda (owner). All five petitioners are entitled to get equal amount with interest @ 7% per annum from the date of filing of this case till realization against the opposite party No. 2, the Oriental Insurance Co. Ltd. within three months (preferably) from the date of receipt of copy of order failing which the petitioners will recover the same through process of law.

The O.P. No. 2, the Oriental Insurance Co. Ltd. shall issue five account payee cheques in favour of the applicants namely, 1. Rekha Sau @ Sahoo, 2. Anupama Sau @ Sahoo, 3. Nirupama Sau @ Sahoo, 4. Milan Sau @ Sahoo & 5. Sandhya Sau @ Sahoo in equal amount.

Let a copy of this order be issued in favour of claimants and O.P. No.2, Oriental Insurance Co. Ltd. at free of costs".

6. The appellant Oriental Insurance Company Ltd. being aggrieved with regard to the quantum of compensation awarded has come up with the instant appeal. The claimants respondent Nos. 1-5 have also filed cross objection challenging the quantum of compensation awarded. The grounds of challenge of the appellant Oriental Insurance Company Ltd. is that the learned Trial Court ought not to have based the findings on the basis of income of Rs. 1,00,000/- but the learned Judge ought to have proceeded on the basis of some notional income. The other ground of appeal is that the deduction of personal expenses ought not to be 1/5th but 1/4th. The ground of challenged by the claimants respondent Nos. 1-5 is that the claimants respondent Nos. 1-5 had yearly income of Rs.4,15,668/-but the learned Judge erred in proceeding on the basis of Rs. 1,00,000/-.

7. During the pendency of this appeal the matter was remitted to the learned Trial Court for examining the Income Tax Authority. Pursuant to the matter being remitted before the learned Trial Court the Income Tax Authority was examined on 14th August, 2025 being P.W. 3 of MACC 115 of 2017.

8. Upon hearing the learned advocates and considering the facts of the case this Court is of the view that as the claimants respondent Nos. 1-5 have examined the Income Tax Authority in terms of the direction of this Court and as per the evidence of the Income Tax Authority the gross total income of the incumbent was Rs.14,15,668/- and the Income Tax deducted was Rs.2253/- it would be proper to proceed on the basis of the said total income.

9. Learned advocate for the appellant Insurance Company has relied upon the following judicial decisions:

i) ***New India Assurance Co. Ltd. Vs. Charlie and another*** reported in ***(2005) 10 SCC 720.***

10. In the case of New India Assurance Co. Ltd. Vs. Charlie and another the Hon'be Supreme Court was pleased to observe as follows:

"***11. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-***

maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of a year's purchase."

11. Learned advocate appearing for the claimants respondent Nos. 1-5 have relied upon the following judicial decisions:

    i) ***National Insurance Co. Ltd. Versus Indira Srivastava and Others*** reported in ***(2008) 2 SCC 763.***
    ii) ***Sunil Sharma and Others Versus Bachitar Singh and Others*** reported in ***(2011) 11 SCC 425.***
    iii) ***The new India Assurance Co. Ltd. Versus Renuka Laha & Ors.*** reported in ***2013 SCC OnLine Cal 12771.***
    iv) ***Manasvi Jain Vs. Delhi Transport Corporation Limited and Ors.*** reported in ***(2014) 13 SCC 22.***

12. Upon considering the judicial decisions it is clear that while computing compensation that income of the victim will be taken into consideration which remained after deducting the statutory taxes, namely, the Income Tax and the Professional Tax.

13. It is held that in the case of ***National Insurance Co. Ltd. Versus Indira Srivastava and Others*** that income connotes the follows:

    "9. The term "income" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members

of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

14. The Hon'ble Court further observed that:

"10. Section 168 of the Act uses the word "just compensation" which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme take recourse to payment of contributory provident fund, gratuity and other perks to attract the people who are efficient and hard-working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased:

"Basic	***:63,400.00***
Conveyance Allowance	***:12,000.00***
Rent CO Lease	***:49,200.00***
Bonus (35% of basic)	***:21,840.00***
Total	***1,45,440.00***

In addition to above, his other entitlements were

Contribution to PF-10% basic	***Rs.6240 (p.a.)***
LTA reimbursement	***Rs.7000 (p.a.)***
Medical reimbursement	***Rs.6000 (p.a.)***
Superannuation 15% of basic	***Rs.9360 (p.a.)***
Gratuity contribution -5.34% of basic	***Rs.6240 (p.a.)***

Medical policy-self and family @ Rs.55000 (p.a.)
Education scholarship @ Rs.500
Payable to his two children directly Rs.12000 (p.a.)

15. Thus, it is clear that apart from the statutory taxes the investments made by the victim the allowances which are receivable and the perquisites cannot be deducted for the purpose of arriving at the compensation.

16. In the instant case as the gross total income of the victim as per the deposition of the Income Tax Authority is Rs.4,15,668/-, the compensation should be arrived at upon deduction of the Income Tax Act from the gross total income. Although certain deductions are permissible under the Income Tax from the gross total income but the said deductions are only for the purpose of assessment of the Income Tax and the same does not have any relation with the procedure of computing the compensation in a motor accident claim case. Hence, although the total taxable income of the victim is Rs.2,72,530/-which is arrived at after making different deductions under the Income Tax Act but the compensation should be computed after deduction the Income Tax from Rs.4,15,668/- which is gross total income. In the event the total annual income is Rs.4,15,668/- 1/4th should be deducted on account of personal expenses and the yearly income comes to Rs.3,11,751/-. The

Income Tax which should be deducted as per the deposition of the Income Tax Authority Rs.2,253/-. Thus the net income comes to Rs.3,09,500/-. However, for the purpose of convenience the net annual income. As the victim was 42 years of age multiplier of 14 should be applied and the total dependency loss comes to Rs.43,33,000/-. The future prospect of 25% being added comes to Rs.54,16,250/-. Further the claimants are entitled to Rs.70,000/- on account of loss of estate, funeral expenses and loss of consortium which is Rs. 70,000/- hence, the total compensation comes to Rs.54,86,250/-. However this Court is of the view that Rs.55,00,000/- is just and reasonable.

17. In the facts and circumstances, this appeal FMA 323 of 2024 along with COT No. 42 of 2024 and CAN 1 of 2024 stands disposed.

18. The claimants respondent Nos. 1 to 5 are entitled to compensation of Rs.55,00,000/- from appellant Oriental Insurance company Ltd. of Rs. 55,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today. The appellant Oriental Insurance Company Ltd. shall deposit Rs. 55,00,000/- along with interest before the learned Registrar General, High Court, Calcutta within eight weeks from the date of communication of this order. However, in the event the compensation awarded by the learned Trial Court is already deposited the

balance amount be deposited within eight weeks. The claimants' respondent Nos. 1 to 5 is permitted to withdraw the compensation amount upon compliance of necessary formalities.

19. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(BISWAROOP CHOWDHURY, J.)