

S/L 52
17.03.2026
Court No.4
Swd

*Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side*

FMA 27 of 2024

Latika Paul & Ors.

Vs.

The Oriental Insurance Company Limited & Anr.

*Mr. Subir Banerjee,
Mr. Abhijit Raha.*

... for the Appellant.

Mr. Rishin Chakraborty.

... for the Insurance Company.

1. The learned Advocates for the parties are present.
2. Heard the learned Advocates.
3. The appellants before this court were the claimants in a case under section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 4th August, 2023 passed by the learned Additional District Judge, Fast Track, First Court, Jalpaiguri in M.A.C Case No.199 of 2020. The case of the claimants before the learned trial court may be summed up thus:-
4. On 27.08.2018, at about 9.30 a.m, the victim Sanjit Paul, since deceased, was going towards home from Mathabhanga by driving a scooty being No.WB 86B-2494 at the left flank of the road, at that time, one vehicle

being No. WB72L-2175 (LMB Alto) was coming from Sitalkuchi side with a high speed in a rash and negligent manner and dashed the scooty of the victim at Mathabhanga to Sitalkuchi State Highway, Alengmari, P.S. Mathabhanga, District – Cooch Behar.

5. As a result, the victim sustained previous injuries on his person and was immediately shifted to the nearest Mathabhanga SD Hospital by the local people and he was declared dead. The accident occurred due to rash and negligent driving on the path by the driver of the offending vehicle No.WB72L-2175.
6. The deceased was the only bread earner of his family and due to his sudden demise, the petitioners have been suffering much loss, pain and shock.
7. Pursuant to the filing of the claim case, notice was issued upon the opposite party vehicle owner and the opposite party Oriental Insurance Company Limited. Opposite party Oriental Insurance Company Limited contested the case by filing written statements.
8. By judgment and award dated 04.08.2023, the learned Trial Judge disposed of the claim case by observing and directing as follows:-

“That the instant case filed u/s 166 of Motor Vehicles Act, 1988 is allowed on contest as against the O.P No-2/ Oriental Insurance Co. Ltd. and ex-parte against the O.P No-1/ owner. The petitioners i.e Latika Paul (mother), Pratima Paul (wife), Puja Paul (minor daughter) and Sonai Paul (minor daughter) do get an award of Rs. Rs. 9.47,500/- (Nine lac forty seven thousand five hundred only) in total in equal share.

The O.P No-2/ Insurer, is directed to pay the awarded amount to the petitioners/ claimants with interest @6% from the date of filing of the application, within three months from this date. The petitioners shall be at liberty to put this award in execution in accordance with law if the Op. No.2 fails to satisfy the award within the period mentioned above.

Petitioner No.2 Pratima Paul is directed to deposit the share of award of the minors petitioner no.3 and 4 in any nationalized bank or post office under fixed deposit scheme till they attain majority and submit copy of the certificate before the Tribunal positively.

However, considering the entire aspects this Tribunal passes no order as to cost.”

9. The appellants/claimants being aggrieved by the judgment and award passed by the

learned trial judge has come up with the instant appeal.

10. Heard learned Advocate for the appellant and learned Advocate for the respondent No.1, Oriental Insurance Company Limited perused the evidence adduced and materials on record.
11. Learned Advocate for the appellant submits that the learned trial judge erred in considering the notional monthly income of the victim as Rs.6000/-, although evidence was adduced by the claimants that the victim used to earn Rs.15000/- per month. Learned Advocate further submits that the learned trial judge further erred in not awarding filial consortium to the mother of the victim. Learned Advocate also submits that the percentage with regard to the general damages should also be increased.
12. Learned Advocate for the respondent No.1, Oriental Insurance Company Limited submits that no document was furnished with regard to income and the occupation of victim by the claimants. Thus, the learned Trial Judge did not commit any error in considering the notional monthly income of Rs.6000/-.

13. Learned Advocate further submits that the award passed by the learned Trial Judge may not be interfered.
14. Upon hearing the learned Advocates and considering the evidence adduced, it appears that the PW1, appellant No.1, deposed that the victim used to earn Rs.15000/- per month from the sweet shop.
15. In the instant case, no document is furnished with regard to the income of the victim nor any document is furnished with regard to his occupation. Although it is not unusual for a person running a sweet shop to earn Rs.15000/- per month, but in the absence of documents with regard to business or any evidence corroborating the fact that the victim was running a sweet shop, it cannot be concluded that the victim had a business of sweet shop.
16. However, considering the age of the victim to be 47 years and the fact that the victim was having two minor children, wife and mother, it is not unusual for the said victim to earn Rs.8000/- per month.
17. Thus, in the instant case, it would be just and reasonable to consider the notional monthly income of the victim to be Rs.8000/-.

18. In the event, the notional monthly income is considered as Rs.8000/-, the annual income comes to Rs.96000/-. Future prospect considered as Rs.25%, the total annual income will come to Rs. 120000/-. One-fourth being deducted on account of personal expenses, the annual dependency loss comes to Rs.90000/-. Considering the age of the victim, multiplier of 13 should be applied and the total dependency loss comes to Rs.11,70,000/-.
19. Further, the appellants are entitled to filial consortium of Rs.40,000/- each for the mother and wife of the victim and Rs.30,000/- on account of loss of estate and funeral expenses. Thus, general damages comes to Rs.12,80,000/- by arithmetical calculation.
20. However, this Court is of the view that compensation of Rs.12,50,000/- is just and reasonable. Thus, the appellants/claimants are entitled to Rs.12,50,000/- from the respondent No.1, Oriental Insurance Company Limited along with interest at the rate of 6% per annum from the date of filing of the claim case till today.
21. The respondent No.1, Oriental Insurance Company Limited shall deposit the

compensation amount of Rs.12,50,000/- along with interest at the rate of 6% per annum from the date of filing of the claim case within a period of 8 weeks from the date of communication of this order before the Registrar, Circuit Bench, Jalpaiguri, High Court, Calcutta.

22. As the learned advocates submit that the amount awarded by the learned Trial Court along with interest have been paid, the respondent No.1, Oriental Insurance Company shall deposit the balance amount along with interest within a period of 8 weeks from the date of communication of this order. The appellants/claimants will be entitled to withdraw the compensation amount upon compliance of the necessary formalities.
23. In view of the above, FMA 27 of 2024 is accordingly disposed of.
24. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(BISWAROOP CHOWDHURY, J.)