

S/L 5
23.07.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1488 of 2024

National Insurance Co. Ltd.
Vs.
Debjani Das (Ghosh) & Ors.

Mr. M. P. Chakrabarty,
Ms. Ratnadipa Karmakar.

... for the Appellant.

Mr. Sounak Bera,
Mr. Pingal Bhattacharya,
Mr. Rajdeep Sinha,
Ms. Oidrilla Sarkar.

... for the Respondent.

1. The learned Advocates for the parties are present.
2. Heard learned Advocates.
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 19th December, 2023 passed by the learned Additional District Judge, 4th Court, Paschim Medinipur in MAC Case No.346 of 2012.

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

On 21.02.2010 at about 07.15 P.M when the victim, namely, Subhamay Biswas along with his wife, namely, the sole petitioner were moving on his Honda Unicorn bike bearing registration

number W.B 34U/ 0949 from Kharagpur to Midnapore, on the way while the bike reached at Bargai near Reliance Petrol Pump a trailer bearing registration no. A.P 31X 3359 came from the opposite side at high speed and in rash and negligent manner thereby dashed the motor bike. Thus, the victim suffered injuries on all his person and died on spot. The petitioner being pillion rider suffered injuries on her person, thus she was shifted to hospital at Kharagpur. The victim since deceased was employed in private sector and used to receive monthly salary of Rs.13,500/-. On the death of the victim the legal heirs has brought the instant proceeding.

5. Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party vehicles owner did not contest the case. However, Opposite Party Insurance Company Ltd and Opposite Party Mother of the Victim contested the case. Issues were framed and evidence was adduced.
6. Learned Trial Judge, upon considering the evidence adduced and upon hearing the learned Advocates was pleased to dispose of the claimed case by observing and directing as follows:

“Hence, it is

ordered

that the MAC case no. 346 of 2019 be and the same is allowed on contest without cost against the O.P No. 2. The National Insurance Company Limited and O.P no.3 and in ex-parte against the owner of the vehicle without costs.

O.P No.2, National Insurance Company Limited, the insurer of the offending vehicle bearing no. AP-31X/2359 (Trailer) is directed to pay the compensation of Rs.29,62,600/- (Twenty Nine Lakh Sixty Two Thousand Six Hundred only)) to the claimant No. 1, Opposite party no.3 by account payee cheques within two months hereof with the interest as per banking rate applicable to fixed deposit from the date of filing of the application till realization of the amount. However, out of the aforesaid amount Rs.50,000/- towards filial consortium, shall be payable separately to O.P no.3 and Rs.100,000/- in respect of spousal consortium is to be paid separately to the claimant No. 1.

The copy of the judgment shall be handed over to the parties after deposit of deficit Court fee by 19.01.2024.”

7. The appellant, National Insurance Company Ltd, being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. Heard learned Advocate for the appellant and learned Advocate for the

respondents claimants. Perused the evidence adduced and materials on record.

8. Learned Advocate for the appellant submits that the learned Trial Judge erred in considering the income of the victim as Rs.13,500/- without any proof of the income or of the occupation.
9. Learned Advocate further submits that the compensation claimed by the claimants was Rs.20,00,000/- and the compensation awarded by the learned Trial Judge is Rs. 29,62,600/-. Learned advocate submits that the compensation awarded is excessive.
10. Learned Advocate appearing for the claimants respondents submits that the claimants adduced evidence showing necessary documents with regard to the occupation of the victim which was considered by the learned Trial Court and, thereafter, compensation was awarded.
11. Upon hearing the learned Advocates and considering the facts of the case and upon perusing the judgment of the learned Trial Court it appears that the claimants filed the identity card of the victim showing his employment as an insurance agent. Such document was considered by the learned Trial Court and the learned Trial Court while considering the said evidence was pleased to observe as follows.

“In the body of the application u/s 166 of M.V.Act, there is specific averment that the victim since deceased used to earn 13500/- per month as insurance agent. There is no other cross examination with regard to the documents (Exhibit C, Exhibit-D and Exhibit E) regarding the profession of the victim. The evidence of O.P.W. 1 does not reveal any cogent material to controvert the profession and income of the victim. In today's socio economic it is quite normal for an insurance agent to earn ₹13000/- in a month. Thus, there is no hesitation to accept the evidence of P.W.1 and O.P.W.- 1 regarding income of the victim since deceased. Accordingly, it can be stated that the claimant and O.P.W - 1 have duly proved the monthly income of ₹13,500/- on the date of death of victim.”

12. In order to prove the profession of a particular person, it is sufficient that the license which is required for the said profession is produced. Such production of the license will go to show that the person is engaged in a particular profession. However, the mere license production will not prove the income for which separate documents are required to be filed, namely, the income tax return or bank passbooks.

13. Although. in all cases the income tax returns are not filed unless it becomes a taxable income, but

definitely Courts are empowered to consider a notional income as per the nature of the occupation. In the instant case, the learned Trial Judge upon considering the nature of the occupation and the documents filed and considering the socio-economic condition considered the income of the victim as Rs.13,500/-. Thus, considering the reasons assigned, this Court does not find any error in the decision of the learned Trial Judge. Thus, with regard to the total dependency loss, there is no such error in arriving at the compensation of Rs.27,21,600/-.

14. However, upon perusal of the order of the learned Trial Judge it appears that although the consortium was awarded under the heading General Damages as Rs.40,000/-, but once again the said consortium was awarded as a general consortium amounting to Rs.1,00,000/. Thus, Rs.1,00,000/- compensation granted in excess on the head of consortium should be reduced. Thus, the total compensation which the claimants are entitled comes to Rs.28,62,600/- by arithmetical calculation. However, in view of this Court, compensation of Rs.28,50,000/- is just and reasonable.

15. Hence, this appeal **F.M.A. 1488 of 2024** stands disposed. The judgment and award dated 19th

December, 2023 passed by the learned Additional District Judge, 4th Court, Paschim Medinipur in M.A.C Case No.346 of 2012 stands modified to the extent that the claimants, respondents are entitled to compensation of Rs.28,50,000/- from the Appellant National Insurance Company Limited. The Appellant National Insurance Company Limited shall deposit Rs.28,50,000/- before the Register General, High Court, Calcutta 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 no further deposit be made.

16. The claimants respondents will be entitled to withdraw compensation of Rs.28,50,000/- upon compliance of necessary formalities. The balance amount, if any, with accrued interest, be returned to the Appellant insurance company.
1. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(BISWAROOP CHOWDHURY, J.)