



**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Partha Sarathi Sen

FMA 51 of 2025

Smt. Deoyanti Prasad & Ors.

-vs-

Mr. Swapan Kumar Banerjee & Anr.

For the appellants/claimants : Mr. Uday Sankar Sarkar

For the respondent : Mr. Hirak Barman
no.2/insurance company Mr. Abdul Habib

Heard on : 19.08.2025

Judgement on : 19.08.2025

PARTHA SARATHI SEN, J.:

1. The informal paper book as filed on behalf of the appellants/claimants is taken on record.
2. The learned advocate appearing on behalf of the appellants/claimants files a short notes of argument after serving a copy of the same to the learned advocate-on-record for the respondent no.2/insurance company. The same is also taken on record.



3. In this appeal, the judgment dated 18th November, 2023 as passed by the learned Judge, MAC Tribunal & Addl. Dist. & Sessions Judge, 4th Court, Jalpaiguri in Motor Accident Claims Case No.88 of 2019 is assailed.
4. By the impugned judgment, the said Tribunal while disposing an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'said Act' in short), awarded compensation to the tune of Rs.25,06,431/- in favour of the appellants/claimants with a direction that the appellant/claimant no.1 will alone get 50% of the said awarded amount while the appellants/claimant nos.2 to 5 will get the remaining 50% of the awarded amount in equal shares.
5. In the impugned judgment, the said Tribunal also directed that the respondent no.2/insurance company is liable to pay interest at the rate of 9% per annum over the said awarded amount from the date of filing of the application till the actual payment, in the event, the respondent no.2/insurance company fails to pay the aforementioned awarded amount within two months from the date of passing of this judgment as and by way of penal interest.
6. At the time of hearing, Mr. Sarkar, learned advocate appearing on behalf of the appellants/claimants at the very outset draws the attention of this Court to the impugned judgment. It is submitted by Mr. Sarkar that most surprisingly, the learned Tribunal while



determining the income of the deceased came to a finding that at the time of his death the deceased's monthly salary was to the tune of Rs.26,306/- (gross salary Rs.26,256/- + Professional tax Rs.150/-) without considering the attested copy of the memo dated 6th August, 2020, as issued by the Senior Accounts Officer, office of the Principal Accountant General (A&E), West Bengal.

7. It is submitted by Mr. Sarkar that from the said attested letter dated 6th August, 2020, it would reveal that while calculating the revised pensionary benefit, the office of the Principal Accountant General had found that the last drawn pay of the deceased was to the tune of Rs.30,300/-, which has not been considered by the learned Tribunal for the reason best known to him.
8. In his next fold submission, Mr. Sarkar submits that from the impugned judgment, it would reveal that the said learned Tribunal only granted penal interest instead of granting interest over the awarded amount from the date of filing of the application under Section 166 of the said Act i.e. on and from 21st September, 2023 till actual payment. It is, thus, submitted by Mr. Sarkar that the instant appeal may be allowed by enhancing the compensation as per the third column of the second page of the short notes of argument as filed today.
9. *Per contra*, Mr. Barman, learned advocate appearing on behalf of the respondent no.2/insurance company submits before this Court that



the pay slip of the deceased was exhibited before the learned Tribunal as “Exhibit-9” wherefrom the learned Tribunal rightly noticed that the monthly income of the deceased was to the tune of Rs.26,306/-. It is further submitted by Mr. Barman that the attested copy of the memo dated 6th August, 2020 is not at all relevant for the purpose of calculating the income of the deceased inasmuch as the said memo dated 6th August, 2020 is relevant only for the purpose of calculation of the revised pensionary benefit of the deceased.

10. It is further submitted by Mr. Barman that in absence of any infirmity in the impugned judgment, there is hardly any scope to interfere with the amount of penal interest as imposed by the learned Tribunal.
11. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that before the learned Tribunal the pay slip in the month of October 2018 of the deceased was exhibited with the mark “Exhibit-9” wherefrom it reveals that the last drawn basic pay of the deceased was Rs.25,241/- and he used to pay Rs.150/- towards government dues i.e. professional tax and etc. At this juncture, if, I look to the attested copy of the memo dated 6th August, 2020 as issued from the office of the Principal Accountant General (A & E), West Bengal, it reveals that at the time of



calculation of the admissibility of the revised pensionary benefit to the dependents of the deceased the said office found that the last drawn pay of the deceased is to the tune of Rs.30,300/-

12. Admittedly, such revised calculation was made after the death of the deceased but such calculation of revised pay shall have retrospective effect from the day of its admissibility and, thus, on the basis of such last drawn pay to the tune of Rs.30,300/- the quantum of family pension and revised gratuity were assessed.
13. Keeping in mind that the Motor Vehicles Act, 1988 is a beneficial legislation, this Court considers that the learned Tribunal ought to have given due credence over the said memo dated 6th August, 2020 by holding that the income of the deceased at the time of his death was Rs.30,300/- per month instead of Rs.26,156/-
14. As rightly pointed out by Mr. Sarkar that in the impugned judgment the learned Tribunal only granted a penal interest, which in considered view of this court is not correct approach. In considered view of this Court, the learned Tribunal ought to have grant interest at the prevailing bank interest rate i.e. at the rate of 6% per annum on the awarded amount from the date of filing of the application keeping in mind the basic principle that for non-payment of compensation in favour of the appellants/claimants by the insurance company in due time, the appellants/claimants were deprived of their legitimate bank interest over the awarded amount.



15. Such being the position, this Court holds that the awarded amount must carry interest at the rate of 6% per annum from the date of filing of the claim application till the actual payment.

16. In view of such, this Court while disposing of the instant appeal assesses the amount of compensation as payable to the appellants/claimants in the manner indicated hereinabove: -

Head of the Item	Assessment of the Just Compensation
Monthly income of the deceased at the time of death	Rs.30,150/-
Annual income	Rs.3,61,800/-
Less 1/4 th of the amount for personal living expenses	Rs.90,450/-
Multiplicand =	Rs.2,71,350/-
Multiplicand x 9 (Multiplier)	Rs.24,42,150/-
Add future Prospects @ 15%	Rs.3,66,322/-
Add General Damage	Rs.70,000/-
Enhanced General Damage @ 20%	Rs.14,000/-
Total Compensation	Rs.28,92,472/-

17. The aforementioned assessed amount to the tune of Rs.28,92,472/- shall carry interest at the rate of 6% from the date of filing of application i.e. 21st September, 2023 till the date of actual payment.



18. It is undisputed that the appellants/claimants have already received the awarded amount of Rs.25,06,431/- as assessed by the learned Tribunal. Therefore, the respondent no.2/insurance company is directed to pay the balance amount together with the accrued interest as indicated in the forgoing paragraph positively within 180 working days from the date of passing of this judgment to the appellants/claimants in the proportion, as indicated in the impugned judgment.
19. The respondent no.2/insurance company is, therefore, directed to deposit the balance amount together with interest with the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri.
20. Liberty is given to the appellants/claimants to withdraw the balance amount as indicated in the forgoing paragraph from the office of the learned Registrar, High Court at Calcutta, Circuit Bench at Jalpaiguri in the proportion, as mentioned in the impugned judgment, on production of their identity proofs, which will be authenticated by the learned advocate-on-record for the appellants/claimants.
21. With the aforementioned observations, FMA 51 of 2025 is allowed and disposed of along with all pending connected *interlocutory* applications, if, there be any.



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

(Partha Sarathi Sen, J.)

SR.
A.R. (Court)