

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 584 Of 2007

With

CAN 1 of 2008 (Old No. CAN 3473 of 2008)

&

CAN 2 of 2009 (Old No. CAN 190 of 2009)

Rabi Ruidas & Ors.

Versus

The New India Assurance Co. Ltd.

For the Appellants : Mr. Krishanu Banik, Adv.
Mr. T. Banik, Adv.

For the Respondent : Mr. S. Bhowmick, Adv.

Heard on : 03.10.2023

Judgment on : 06.10.2023

Ajay Kumar Gupta, J:

1. The appellants/claimants have assailed the judgment and award dated 26th July, 2006 passed by the Learned Judge, Motor Accident Claims Tribunal, 4th Court, Burdwan in M.A.C. Case No. 112 of 2005/566 of 2004, thereby the learned Tribunal awarded a sum of Rs. 2,20,000/-. The respondent no. 1/Insurance Company is directed to pay the compensation amount within sixty days from the date of judgment and award failing which amount of award will carry an interest @ 9% per annum from the date of default till realization. The claim application has been filed under Section 163A of the Motor Vehicles Act and same has been allowed on contest against the respondent no. 1/Insurance Company and ex parte against respondent no. 2/owner of the offending vehicle.

2. Sans otiose details, the case of the appellants/claimants is that on 13.07.2004 victim Subal Ruidas was coming from Naricha village to his own village with bicycle along with Kacha side of Burdwan-Bankura Road, at that material point of time, one truck bearing registration no. WB-41/6981 dashed the victim with a very high speed as a result victim Subal Ruidas sustained severe injuries on his person. He was removed to Burdwan Medical College and Hospital where he died. Due to such death of Subal Ruidas, the legal heirs and representatives of the said victim filed

a claim case under Section 163A of the Motor Vehicles Act against insurer and owner of the offending vehicle (truck) bearing registration no. WB-41/6981. Respondent No.1/insurance Company has contested the claim case by filing written statement denying all material facts and allegations of the appellants/claimants and further contended, inter alia, that the claim application is not maintainable and liable to be dismissed, whereas the owner of the offending vehicle did not contest the case from very initial stage. To prove the case of the appellants, Bapi alias Sambhunath Ruidas has examined himself as P.W. 1, one eye witness to the accident, Kalipada Dhara has examined as P.W. 2 and Smt. Rabi Ruidas as P.W. 3. Apart from that, the appellants/claimants have filed several documents such as copy of FIR of Khandaghosh P.S. Case No. 42/2004 dated 14.07.2004, charge sheet, certified copy of seizure list, forwarding report, post mortem report and many others.

3. The learned Tribunal after scanning and appreciation of all evidence both oral and documentary adduced by the parties, awarded compensation to the tune of Rs. 2,20,000/- considering the income of victim as Rs. 2,000/-. Being aggrieved and dissatisfied with the said amount, the appellants have filed the instant appeal seeking enhancement of compensation.

4. Mr. Krishanu Banik, Ld Advocate with Mr. T. Banik, learned counsel appearing on behalf of the appellants submitted that the learned Tribunal erred in assessing the income of the victim though the claim of the appellants is that the victim was a carpenter and he worked on daily wages basis prior to his accident. He used to earn Rs. 3,000/- per month considering Rs. 100/- per day as a minimum wages. Therefore, his income ought to have accepted as Rs. 3,000/- per month. Another limb of submission of the learned counsel is that interest has not been allowed on the awarded sum from the date of filing claim application till realisation. Though there are several decisions of this Hon'ble High Court as well as Hon'ble Supreme Court on the issue of granting interest from the date of filing claim application but the learned Tribunal did not allow interest from the date of filing of the claim application till realisation. Therefore, this Appellate Court may be considered only on these two issues for enhancing of the compensation amount. To buttress his submission, he referred two judgments of the Hon'ble Supreme Court of India and one judgment of Hon'ble Calcutta High Court, which are as follows:

- i.** Laxmi Devi & Others vs. Mohammad Tabbar & Another, 2008 (2) T.A.C. 394 (SC).
- ii.** Gurmit Kaur and Anr. Vs. State of Haryana And Ors., AIR 2000 SC 3465.

iii. Smt. Bilasini Mondal vs. National Insurance Company, 2003 (2) T.A.C. 435.

The accident was taken place in the year 2004 and the income claimed by the claimants is very minimum wages. In view of the decisions of the Hon'ble Supreme Court even an unskilled labour could earn Rs. 100/- per day, if it considers as Rs. 100/- per day for an unskilled labour wages, it comes to Rs. 3,000/- per month.

5. Per contra, Mr. S. Bhowmick, learned counsel appearing on behalf of the respondent strenuously submitted that the learned Tribunal has rightly assessed the compensation amount of Rs. 2, 20,000/- including general damages towards funeral expenses, loss of consortium and loss of state. The Ld. Tribunal has rightly considered and assessed the income of the victim as Rs. 2,000/- because this case falls under Section 163A of the Motor Vehicles Act. It is totally based on structural formula as specified in Schedule II of the Motor Vehicles Act, 1988. Therefore, there is no error on the part of the learned Judge of the Tribunal. Accordingly, the instant appeal is required to be dismissed in limini.

6. Having heard the submission of both sides and on perusal of the entire records including judgments referred by the appellants, this Court finds the claim application has been filed by the appellants before the

learned Tribunal under Section 163A of the Motor Vehicles Act, 1988 which does not require to prove any negligence either on the part of the driver or the victim as the case is totally based on no fault liability. In this Case, only claimants require to prove the accident occurred due to the involvement of the offending vehicle bearing registration number WB-41/6981. It is not disputed by the parties that the offending vehicle was not involved in the said accident. The FIR, charge sheet, seizure list and PM report clearly proved that the offending vehicle was involved in the said accident which was occurred on 13.07.2004 and due to such accident, the victim Subal Ruidas was expired due to severe injuries sustained by him.

7. Now only issues, emerge before this Court, are as follows:

i. Whether the learned Judge of the Motor Accident Claims Tribunal erred in assessing the income of the victim as Rs. 2,000/- in place of Rs. 3,000/-?

ii. Whether the Ld. Tribunal ought to have granted interest on the compensation amount from the date of filing of the claim application till realization?

8. So far as the first issue is concerned, the claimants have claimed that the victim was a carpenter and he used to work on daily basis

everyday and from the said services he used to earn Rs. 3,000/- per month, with such amount he used to maintain his six family members prior to his accident. It is true that no document brought on record from the side of the appellants but from the oral evidence of P.Ws. 1 and 3 it reveals he used to earn Rs. 100/- per day and he used to give money to his father. At the same time P.W. 3 stated in his evidence that the victim was a carpenter by occupation. Once he engaged him in his house for making doors and windows. He paid Rs. 115/- per day as a daily wages as a carpenter. This oral evidence could not be contradicted or rebutted by the Insurance Company during cross-examination. Insurance Company did not adduce any evidence to discard the evidence of the P.Ws. 1, 2 and 3. Apart from that, the judgment referred by the appellants also relevant for consideration of the victim's monthly income as Rs. 3,000/- especially when there is no contradicted evidence transpired from the side of Insurance Company. Moreover, Hon'ble Supreme Court in **Laxmi Devi and Others v. Md. Tabbar and Anr**¹ observed that the notional income of Rs. 15,000/- per annum given in the second Schedule was prescribed in the year 1994. The accident was taken place in the year 2004. In the year 2004, even an unskilled labour could have easily earn Rs. 100/- per day and Rs. 3,000/- per month. Similarly in the instant case, the accident was occurred on 13.07.2004. Therefore, the observations made by the Hon'ble

¹ 2008 (2) T.A.C. 394 (SC)

Supreme Court in the aforesaid judgment is very much applicable in the instant case. Accordingly, the income of the victim can be safely accepted as Rs. 3000/- per month as his notional income.

9. With regard to the interest, I would like to refer the judgment passed by our Hon'ble High Court reported in a Case **Rekha Dutta & Ors. vs. Ram Avatar Lohia & Anr.**² Wherein this High Court held that:

“In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of Alok Shanker Pandey vs. Union of India and Ors reported in AIR 2007 SC 1198:

“It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead

² 2009 (3) TAC (Cal) 783

of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

(Emphasis supplied)

10. Consequently, claimants are entitled to get interest on the awarded compensation amount from the date of filing claim application till realization.

11. There is no dispute regarding the age of the victim and selection of multiplier.

12. Keeping in mind the above observation, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Annual Income (3,000 X 12)	Rs. 36,000/-

1/3 rd Deduction (36,000-12,000)	Rs. 24,000/-
Multiplier as per age of 13 (Rs. 24,000 X 13)	Rs. 3,12,000/-
Add: General Damages	Rs. 9,500/-
Total compensation	Rs. 3,21,500/-

13. Thus, the appellants/claimants are further entitled to get enhanced compensation amount to Rs. 1,01,500/= (Rs. 3,21,500/- minus Rs. 2,20,000/- compensation awarded by the Ld. Tribunal) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 07.12.2004 till final payment.

14. It is informed that the appellant/claimant has already received the compensation amount of Rs. 2, 20,000/- in terms of the order of the learned Tribunal.

15. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants upon proper identification and subject to verification

of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgment and award dated 26th July, 2006.

16. The impugned judgment and award of the learned Tribunal dated 26th July, 2006 is modified to the extent only as aforesaid.

17. With the above observations, the instant appeal stands disposed of without order as to costs.

18. Consequently, **CAN 1 of 2008 (Old No. CAN 3473 of 2008)** and **CAN 2 of 2009 (Old No. CAN 190 of 2009)** are, thus, disposed of.

19. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

20. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)