

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 1344 Of 2019

With

CAN 1 of 2021

Suchita Devi

Versus

The Oriental Insurance Co. Ltd & ors.

For the Appellant : Mr. Amit Ranjan Roy, Adv.

For the Respondent No. 1 : Mr. Sanjay Paul, Adv.

For the Respondent No. 2 : Mrs. Sucharita Paul, Adv.

Heard on : 26.09.2023

Judgment on : 04.10.2023

Ajay Kumar Gupta, J:

CAN 1 of 2021

1. Learned advocate appearing on behalf of the appellant/claimant moved an application for condonation of delay of 161 days in preferring the instant appeal. He referred paragraph No. 5 of the said application to show the reasons for not filing the appeal within the prescribed period of limitation under Section 173(1) of the Motor Vehicles Act, 1988. He prays for condonation of delay for admitting the appeal and getting substantial justice.
2. On the other hand, learned advocates appearing on behalf of the respondent nos. 1 and 2 raised objection of such prayer of condonation of delay.
3. Having heard the submissions of both sides and on perusal of the application, it appears the cause shown by the appellant is satisfactory and accepted. Delay in filing appeal is hereby condoned.
4. Accordingly, **CAN 1 of 2021** is, thus, disposed of.

FMAT 1344 of 2019

5. On the prayer of both the parties, the instant appeal is taken up for disposal as simple issues are involved in the instant appeal as submitted by the parties. Appellant has served the copy of formal paper book to the Respondents and also filed the same is taken on record.

6. The appellant/claimant has assailed the judgment and award dated 10.04.2019 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Suri, Birbhum in M.A.C. Case no. 122 of 2015, thereby the learned Tribunal awarded a compensation to the tune of Rs. 3,54,000/- along with interest @ 6% per annum from the date of filing of the claim application i.e. 30th June, 2015 till realisation thereof on contest against Respondent No. 1/Oriental Insurance Company Ltd. and Respondent No. 2/ Bajaj Alliance Insurance Company and further directed to pay the same in equal share as the accident was occurred due to head on collusion involving two offending vehicles.

7. Feeling aggrieved and dissatisfied with the amount of award, the appellant/claimant filed this instant appeal to the effect that on 10.11.2014 at about 1.35 a.m. the victim Samir Dholi @ Dholi was on duty as a Khalasi of a Dumper bearing No. WB73B/5341 and the said

Dumper was proceeding towards Bankura after loading stone from Pachami and when they reached near Galakata Bridge on NH - 60 under P.S. Sadipur at that material point of time one Truck bearing No. WB 33C/2697 was coming from Dubrajpur side in a rash and negligent manner with a high speed, unexpectedly dashed the said Dumper, at the same time one another trailer bearing no. WB 11C/0052 which was also coming from Dubrajpur side dashed the victim's dumper. As a result, the driver as well as the victim suffered serious injuries on their person. Local people shifted to them to Suri Sadar Hospital but the attending doctor declared victim as brought dead. The claimant being the mother of the victim filed a claim application under Section 166 of the Motor Vehicles Act before the Learned Tribunal with a contention that at the time of accident, his son was a Khalasi and he used to earn Rs. 4,500/- per month from the said service. However, the learned Tribunal erred in assessing his income as Rs. 3,000/- per month as notional income in place of 4,500/- as claimed by the claimants. Apart from that, no future prospect was added while considering the compensation to the claimant. Accordingly, the instant appeal has been filed before this Court praying for enhancement of compensation.

8. The claimant impleaded owners as well as insurers of both the offending vehicles. From very Initially stage of the case, the owner of the

offending vehicle bearing no. WB 33C/2697 did not contest the case in spite of service of notice. However, owner of the offending vehicle bearing no. WB 11C/0052 appeared by filing Vakalatnama and submitted his written statement. At the same time, respondent nos. 1 and 2 both insurance companies appeared and filed their respective written statements denying all the material facts and allegations made in the claim application and finally they prayed for dismissal of the claim application filed by the claimant.

9. During trial, the claimant Suchita Devi has been examined herself as P.W. 1 and one Nitya Badyakar examined as P.W. 2 in support of the claim case filed by the claimant. P.W. 1 narrated the incident as similar as mentioned in the FIR and further exhibited number of documents such as formal FIR, charge sheet, seizure lists, PM Report, Xerox copies of the Insurance Policies, Aadhar Card of one Sumit Dholi and the voter card of the claimant, one Aadhar card of the deceased marked as Exhibits 1 to 9. However, no witness examined by the respondent's side. After conclusion of the arguments of the parties, Ld. Tribunal finally came to conclusion after scanning and appreciation of evidence adduced by the party that both the offending vehicles were equally liable for the said accident. The accident was occurred on head on collision and due to such accident, the victim being the Khalasi of the vehicle died due to injuries suffered on his

person and finally the Ld. Judge awarded a compensation to the tune of Rs. 3,54,000/- along with interest @ 6% per annum from the date of filing of the claim case till realisation thereof. The said amount to be paid by both the insurance companies equally to the claimant.

10. Learned Advocate appearing on behalf of the appellant submitted that the learned Tribunal has erred in assessing the actual income of the Khalasi. The claimant has claimed his income as Rs. 4,500/- prior to the accident, however, the learned Tribunal has assessed his income as Rs. 3,000/- per month as notional income. He also referred unreported judgment of this Court passed in FMAT No.806 of 2016 (Anjali & ors vs. the National Insurance co. Ltd & ors) to support his contention that the accident was occurred in the year 2014. So, notional income could have accepted as 4,000/- even if the claimant unable to prove by way of documentary evidence of his actual income. Not only the Hon'ble High Court but also Hon'ble Supreme Court on several judgments assessed the notional income of the deceased as Rs. 4,000/- per month. So, his income ought to be accepted as Rs. 4000/- per month.

11. It is further submitted that in view of the judgment reported in **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.**¹, future prospect must be added with the actual income but that future prospect has been overlooked by the learned Tribunal. So, the claimant is also entitled to get future prospect as well as general damages in view of the decision in Pranay Sethi's Case (supra). He finally prayed for enhancement of compensation amount.

12. On the other hand, learned advocate appearing on behalf of the respondent nos. 1 and 2 submits that Rs. 3,000/- income was accepted by the learned Tribunal is correct since the claimant fails to prove his actual income and requires no interference by this Appellate Court. On their usual fairness submitted that only future prospect may be added in the said compensation amount awarded by the Learned Tribunal.

13. Having heard the submission of both sides and on perusal of the materials available on record, this Court finds the appellant/claimant has raised three issues:

Firstly, whether the income of the victim as assessed by the learned Tribunal is correct or not?

¹ (2017) 16 SCC 680

Secondly, whether the claimant is entitled to get future prospect in view of the decision of the Supreme Court passed in National Insurance Company Ltd. Vs. Pranay Sethi & Ors.

Thirdly, whether the claimant is entitled to get enhanced amount as claimed by the claimant?

14. It is not disputed that the learned Tribunal has held correctly that both the offending vehicles were responsible for the said accident which was occurred at night on the basis of evidence adduced by the claimant. It is further observed by the learned Judge that the said accident was due to head on collision of the vehicles. Accordingly, both the vehicles are equally responsible for the said accident. So, there is no need for further re-appreciation of the evidence adduced by the parties regarding such findings as there is no dispute over the said issue.

15. It is true that the appellant/claimant fails to brought any documentary evidence to prove the actual income of the victim which was claimed as Rs. 4,500/- per month prior to the accident. Appellant/claimant did not adduce the owner of the Dumper as witness to support the claim of the applicant that the victim Samir Dholi @ Dholi used to earn 4,500/- per month as a Khalasi. In such a situation, the Ld. Tribunal has assessed as Rs. 3,000/- per month as notional income. It is

admitted fact that the accident was taken place on 10.11.2014. It is also admitted fact that no document or oral evidence transpires from the record that the victim was a Khalasi and he used to earn Rs. 4,500/- per month. In such a situation, there is no option but to assess his notional income as Rs. 4,000/-. This Court can consider his income as a notional income. To assess the proper notional income, this Court relies on a decision of the Supreme Court in **Laxmi Devi and Others v. Md. Tabbar and Anr.**², where the Hon'ble Supreme Court held that even an unskilled labour could earn Rs. 100/- per day, so if we consider Rs. 100/- for an unskilled labour it comes to Rs. 3,000/-. But that was the observation made by the Hon'ble Supreme Court in the year 2008. The present case is on the basis of accident occurred on 10.11.2014 that is after six years of the aforesaid decision. The inflation rate of the essential commodities has definitely increased a lot from 2008 to 2014. Similarly, income of the persons also increased simultaneously. So, this Court can safely accept his income as Rs. 4,000/- per month as claimed by the appellant considering the above facts and circumstances as well as several decisions passed by this Court earlier. Accordingly, the income of the victim can be assessed as Rs. 4,000/- per month without any confusion. Furthermore, the claimant also entitled to get future prospect to an amount equivalent to 40% of the annual income of the victim when deceased's age was less

² 2008 (2) T.A.C. 394 (SC)

than 20 years at the time of accident. There is no dispute regarding the selection of multiplier or general damages as awarded by the learned Tribunal.

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

CALCULATION OF COMPENSATION

Monthly Income	Rs. 4,000/-
Add: Future Prospect 40%	Rs. 1,600/-
Total Monthly Income	Rs. 5,600/-
Total Annual Income (5600X12 month)	Rs. 67,200/-
Loss of dependency 67200/-X Multiplier '18'	Rs. 12,09,600/-
Less: 50% for 'Personal expenses of the victim, who was bachelor'	Rs. 6,04,800/-
Compensation after deduction	Rs. 6,04,800/-
Add: General Damages	Rs. 30,000/-

Total compensation	Rs. 6,34,800/-
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17. Thus, the appellant/claimant is further entitled to get enhanced compensation amount to Rs. 2,80,800/= (Rs. 6,34,800/- minus Rs. 3,54,000/- 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 30th June, 2015 till final payment.

18. It is informed that the appellant/claimant has already received the compensation amount of Rs. 3,54,000/- together with interest in terms of the order of the learned Tribunal.

19. The Respondent No. 1/Oriental Insurance Company Ltd. and Respondent No. 2/Bajaj Alliance Insurance Company are directed to deposit the balance amount of compensation together with interest @ 6% by way of cheque before the office of the learned Registrar General, High Court, Calcutta within a period of four weeks from date in equal shares i.e. 1,40,400/- along with interest as indicated above @ 6% on their portion of the enhanced compensation amount.

20. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellant/claimant 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 10.04.2019.

21. With the above observations, the instant appeal stands disposed of.

22. The impugned judgment and award of the learned Tribunal dated 10.04.2019 is modified to the extent only as aforesaid. No order as to costs.

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

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

25. 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.)