

**(2003) 01 CAL CK 0018****Calcutta High Court****Case No:** None

Smt. Bilasini Mondal

APPELLANT

Vs

National Insurance Company  
Limited and Another

RESPONDENT

**Date of Decision:** Jan. 7, 2003**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166

**Citation:** (2003) 3 ACC 137**Hon'ble Judges:** Samaresh Banerjea, J; S.P. Talukdar, J**Bench:** Division Bench**Judgement**

Samaresh Banerjea, J.

The present appeal has been preferred by the claimant against the judgment and award dated 16th August, 2000 passed by the Motor Accident Claims Tribunal, Alipore, 24 Pgs. (South) in MAC Case No. 70/ 97.

2. By the impugned judgment and award, the learned Judge allowed the application of the claimant u/s 166 of the Motor Vehicles Act and awarded a sum of Rs. 44,100/- towards compensation to the claimant in addition to the sum of Rs. 50,000/- already paid u/s 140 of the Motor Vehicles Act.

3. Being aggrieved of the amount of compensation awarded by the Tribunal, the present appeal has been preferred by the claimant. The contention of the appellant is that the claimant is entitled to the entire amount of compensation which has been claimed, namely, a sum of Rs. 1,50,000/-. But the Tribunal awarded the lesser amount of compensation because of the fact that the Tribunal wrongly rejected the evidence of the claimant as to the income of the deceased.

4. It appears to us that admittedly evidence was adduced by the claimant that the victim who was a fish seller used to earn Rs. 3,000/- per month. Since in support of such evidence no such documentary evidence could be produced, the learned Judge

was of the view that the claimant has not been able to prove such fact.

5. Accordingly the learned Judge determined the sum of Rs. 15,000/- p.a. as the notional income of the deceased. It is submitted by the learned Counsel appearing on behalf of the appellant that because of such determination of notional income, the amount of compensation has become lesser although the claimant is entitled to the entire amount of the claim.

6. Considering the respective contention of the parties, it appears to us that the learned Judge rejected the evidence of the claimant as to the monthly income of the deceased only on the ground that there was no cogent evidence regarding his monthly income.

7. We are of the view that that oral evidence is also a piece of evidence and that was overlooked by the learned judge. Merely because no documentary evidence in support thereof can be produced, such oral evidence cannot be rejected outright unless it is found unreliable for any other reason.

8. The issue which is now being raised by the claimant before us in the instant case, namely, whether in the absence of documentary evidence, such oral evidence can be rejected outright by the Tribunal is no *integra* in view of the decisions of the Supreme Court and other High Courts and also because of the number of Division Bench Judgments of this High Court to which one of us (Samaresh Banerjea, J.) is a party.

9. In a similar case where a fish seller was the victim of a Motor Accident under the Motor Vehicles Act and the oral evidence was that his monthly income was Rs. 400/- per month, it was held by a Division Bench of this Court to which one of us is a party (Samaresh Banerjea, J.) in *Rabindra Nath Pramanic and Anr. v. New India Assurance Company Limited* in F.M.A. 1171/01 that in the absence of any documentary evidence as to the monthly income of the deceased, the oral evidence can certainly be relied on.

10. In the case of *Keshab Narayan Banerjee and Others Vs. The State of Bihar*, the Supreme Court accepted the evidence of the widow that her husband's income was Rs. 1,500/- per month in absence of any contrary evidence. The same principle was also followed by the Supreme Court in the case of *Gurmit Kaur and Another Vs. State of Haryana and Others*. It will be also worthwhile to refer to the decision of the Madras High Court in the case of *Pandian Roadways Corporation Ltd. v. Sankaramal and Ors.* reported in 1998 A.C.J. 1175, where not only the said principle was followed, but it was also held by the Supreme Court that if in absence of documentary evidence oral evidence as to the income is rejected, the same may cause in a large number of cases severe hardship to the claimants.

11. We fully agree with the aforesaid decision of the Madras High Court in reality in large number of cases, the victim of a Motor Vehicle Accident may have kind of

occupation in which it will be almost impossible for a claimant to produce any documentary evidence in respect of the income of the deceased. In the case of small traders, unorganized labourers, daily rated workers and many other similar cases, it would cause untoward misery and hardships to the claimant if the Court insist that the oral evidence will not be accepted unless it is corroborated by a documentary evidence.

12. Such principle has also been followed by other Division Bench of this Court, namely, in the case of Smt. Sindubala Garai v. National Insurance Co. Ltd. in F.M.A. 1010/2000 and in the case of Josoda Patra v. National Insurance Co. Ltd. in F.M.A. 1850/2000.

13. It appears to us that the learned Tribunal has overlooked the aforesaid position of law and has erred in the matter of determination of income of the deceased. Considering the material on record, we do not find any reason to reject the evidence of the claimant as to the monthly income of the deceased, namely, Rs. 3,000/- per month, specially in the absence of any contra evidence. Therefore, the claimant is certainly entitled to more compensation than what has been awarded.

14. If the monthly income of the deceased is fixed as Rs. 3,000/- his annual income comes to Rs. 36,000/-. If one-third is deducted from the total amount of annual income, the sum comes to Rs. 24,000/- per annum. As per the age of the mother of the deceased and the claimant No. 11 would be the multiplier and using such multiplier, we arrive at a figure of Rs. 2,64,000/-. Furthermore, a sum of Rs. 2,000/- and a sum of Rs. 2,500/- if added to the same, a total amount of compensation to which the claimant is entitled, comes at a figure of Rs. 2,68,000/-. But, it appears to us that the claimant has made a claim of Rs. 1,50,000/- only. The claimant is entitled to the aforesaid amount.

15. For the reasons stated above, the appeal succeeds and the same is hereby allowed.. The impugned judgment and award of the Tribunal is modified by directing that the claimant will be entitled to the sum of Rs. 1,50,000/- together with interest at 12% from the date of the application. It appears that a sum of Rs. 50,000 / - has already been deposited by the Insurance Company before the Tribunal and the same has also been withdrawn by the claimant. We now direct the National Insurance Company to deposit the balance amount of Rs. 1,00,000/- together with interest @ 12% from the entire awarded amount before the Tribunal and the claimant shall be entitled to withdraw the same without furnishing any security before the Tribunal.

There will be no order as to costs.