

**(2005) 08 CAL CK 0082**  
**In the Calcutta High Court**  
**Case No : F.M.A. No. 535 of 2005**

Ruby Khatoon

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

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**Date of Decision :** 12-08-2005

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 4

**Citation :** (2005) 08 CAL CK 0082

**Hon'ble Judges :** S.P. Talukdar, J;P.K. Samanta, J

**Bench :** Division Bench

**Advocate :** Amit Ranjan Roy, for the Appellant;K.K. Das and Gopa Das Mukherjee, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Samanta and S.P. Talukdar, JJ.—In presence of the learned advocates for the parties, this appeal is treated as on day's list and taken up for disposal along with the application filed by the appellant-petitioner for expeditious disposal of the same.

2. This appeal is directed against the judgment and award dated 3.9.2004 passed in the Claim Case No. 300 of 2003 by the Third Court, Workmen's Compensation, West Bengal. By the aforesaid judgment and award compensation has been determined at Rs. 2,95,590 on the death of the husband of the claimant-appellant.

3. In this appeal the appellant has only questioned the amount so determined by the Commissioner on the basis of the salary certificate of the deceased as produced by the claimant before him. It appears from the records of this case that the deceased victim was employed as a driver of one Abdul Rashid at the time of his death and driving the vehicle bearing No. WB 03-B 3892 owned by said Abdul Rashid. Before the learned Commissioner the salary certificate granted by said Abdul Rashid was produced showing his monthly wages at Rs.

3,500. The said salary certificate was not challenged by the respondent insurance company at the trial, as it appears from the cross-examination of the sole witness, PW 1. No suggestion was even put to her by questioning the salary certificate. We are therefore of the view that the learned Commissioner acted absolutely illegally by not accepting the said salary certificate and further holding that the salary of a driver can never exceed Rs. 3,000 in any way by imputing his personal conception or lack of it in the matter without having any reasonable basis therefor. We therefore accept the monthly wages of the deceased victim at Rs. 3,500 on the basis of salary certificate as produced in the trial. In view of the amended provisions of Section 4 of the Workmen's Compensation Act, whereby Explanation II has been amended by substituting the words "two thousand rupees" occurring at both the places therein by the words "four thousand rupees", we proceed on the basis of the monthly wages of the deceased victim as proved in evidence before the learned Commissioner. For the purpose of determination of compensation under the provisions of the Workmen's Compensation Act, 50 per cent of such monthly wages has to be applied with the relevant factor. As per Schedule IV, the relevant factor would be 197.06 as the victim was aged not more than 35 years on the date of accident, if such factor is applied to the 50 per cent of the monthly wages of the deceased victim, namely, Rs. 1,750, then total amount of compensation would stand at Rs. 3,44,855. Accordingly the impugned judgment and award is modified. We hold that claimant-appellant would be entitled to a sum of Rs. 3,44,855 instead of Rs. 2,95,590 as awarded by the learned Commissioner.

4. It is not in dispute that the claimant-appellant has already received the amount as awarded by the learned Commissioner. Respondent insurance company is therefore directed to pay the balance amount of Rs. 49,265 which will carry an interest at the rate of 6 per cent per annum from the date of filing of the application till payment. Respondent insurance company is accordingly directed to deposit the amount with the learned Commissioner within a period of four weeks from date.

5. The lower court records be sent down to the court below forthwith at the cost of the Department.

The appeal and application are accordingly disposed of.

If urgent Xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.